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CONSOLIDATED STATUTES

OF

NORTH CAROLINA

PREPARED UNDER PUBLIC LAWS 1917, CHAPTER 252, AND PUBLIC LAWS 1919, CHAPTER 238

BY

L. P. McGEHEE

UNDER DIRECTION OF REVISION COMMISSION

HARRY W. STUBBS, CHAIRMAN; LINDSAY C. WARREN, HARRY P. GRIER, STAHL LINN, CARTER DALTON

ANNOTATED

ON THE BASIS OF PELL'S REVISAL OF 1908

BY

A. C. McINTOSH



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VOLUME TWO

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OF

NORTH CAROLINA

REPEALED UNDER PUBLIC LAWS 1911, CHAPTER 225, AND PUBLIC LAWS 1912, CHAPTER 225

BY

L. B. MCGEE

LEGISLATIVE DEPARTMENT OF REVISION COMMISSION

HARRY W. STUBBS, CHAIRMAN; LOUIS C. HARRIS, HARRY S. BRIDGES, L. L. HARRIS, J. B. HARRIS, J. B. HARRIS, J. B. HARRIS

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STATE OF NORTH CAROLINA

IN THE YEAR OF OUR LORD ONE THOUSAND NINE
HUNDRED AND NINETEEN

AN ACT

FOR REVISING AND CONSOLIDATING THE PUBLIC AND GENERAL
STATUTES OF THE STATE OF NORTH CAROLINA

VOLUME TWO

CHAPTER 84

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ART. 1. DEPARTMENT OF AGRICULTURE

Part 1. Board of Agriculture

4666. Constitutional provision. The general assembly shall establish a department of agriculture, immigration, and statistics, under such regulations as may best promote the agricultural interests of the state, and shall enact laws for the adequate protection and encouragement of sheep husbandry.

Rev., s. 3930; Const., Art. III, s. 17.

Section is constitutional: *Cunningham v. Sprinkle*, 124-638. Section is not self-executing, but is mandatory upon legislature: *Ibid*.

Members of board of agriculture are not constitutional officers, but being of legislative creation, are within the power of legislative appointment and are not exclusively, nor of necessity, within the power of executive appointment: *Ibid*.

The board of agriculture is a department of the state government and can be sued only as the state has authorized on action to be brought: *Chemical Co. v. Bd. of Agriculture*, 111-135.

4667. Board of agriculture established; members; term; vacancy. The department of agriculture, immigration, and statistics is created and established and shall be under the control of the commissioner of agriculture, with the consent and advice of a board to be styled "The Board of Agriculture." The board of agriculture shall consist of the commissioner of agriculture, who shall be ex officio a member and chairman thereof and shall preside at all meetings, and of ten other members, one of whom shall be chosen from each congressional district. The members of such board shall be appointed by the governor by and with the consent of the senate, when the terms of the present incumbents respectively expire. The term of office of such members shall be six years and until their successors are duly appointed and qualified. Vacancies in such board shall be filled by the governor for the unexpired term. The commissioner of agriculture and the members of the board of agriculture shall be practical farmers engaged in their profession.

Rev., s. 3931; Code, s. 2184; 1901, c. 479, ss. 2, 4; 1907, c. 497, s. 1.

4668. Compensation of members. Each member of the board of agriculture shall receive five dollars for each day he attends a session of the board and for each day necessarily spent in traveling from and to his place of residence, and he

shall receive also six cents a mile for the distance to and from Raleigh, by the usual direct route, for each meeting of the board which he attends, the same to be paid from the funds of the department. When attending any committee meeting each member of the committee, other than the chairman, shall receive the same per diem and mileage as is fixed for attending meetings of the board.

Rev., s. 3932; 1901, c. 479, s. 3; 1919, c. 247, s. 10½.

4669. Meetings of board. The board shall meet for the transaction of business in the city of Raleigh twice a year, and oftener if called by the commissioner of agriculture, one of which meetings shall be on the first Wednesday in December.

Rev., s. 3935; 1901, c. 479, s. 3.

4670. Executive committee and finance committee. The board shall elect from its numbers an executive committee of four, of which committee the commissioner shall also be ex officio a member and chairman. The board shall elect a finance committee of five from its numbers. The board shall prescribe the powers and duties of these committees, and the commissioner may call meetings of these committees whenever in his opinion such meetings are desirable for the good of the department.

Rev., s. 3936; 1907, c. 876, s. 1.

4671. Moneys received to be paid into state treasury. All moneys arising from tonnage charges on fertilizers and fertilizing materials, inspection taxes on cotton-seed meal and concentrated commercial feeding stuff, and from the sale of any property seized and condemned under the provisions of this chapter, and all other moneys which may come into the hands of the commissioner of agriculture or other officer, member or employee of the department of agriculture by virtue of this chapter, shall be paid into the state treasury by the commissioner of agriculture, and shall be kept on a separate account by the treasurer as a fund for the exclusive use and benefit of the department of agriculture.

Rev., s. 3937; Code, s. 2208; 1876-7, c. 174, s. 22.

4672. Power of board. The board shall be empowered to hold in trust and exercise control over donations or bequests made to it for promoting the interests or purposes of the department; and shall have general supervision and control of the finances of the department; and shall regulate the salaries of all officers and employees other than those whose salaries are fixed by law.

Rev., s. 3933; 1901, c. 479, s. 3.

4673. May require bonds of officers. Bonds may be required for such amounts as the board may think best for all officers of the department who handle funds.

Rev., s. 3934; 1901, c. 479, s. 14.

4674. Annual report. The board shall annually make a report to the governor, to be transmitted by him to the general assembly the years when in session, of its work and matters relating thereto, which report shall contain a statement of all receipts and expenditures and the objects for which expended.

1907, c. 876, s. 2.

Part 2. Commissioner of Agriculture

4675. Election; term; vacancy. The commissioner of agriculture shall be elected at the general election for other state officers, shall be voted for on the same ballot with such officers, and his term of office shall be four years, and until his successor is elected and qualified. Any vacancy in the office of such commissioner shall be filled by the governor, the appointee to hold until the next regular election to the office and the qualification of his successor.

Rev., s. 3938; 1901, c. 479, s. 4.

4676. To appoint secretary and other officials. The commissioner of agriculture shall appoint a secretary and prescribe his duties, and shall appoint such employees as may be necessary to the efficient prosecution of the duties of the department of agriculture. He shall, subject to the approval of a majority of the board, appoint heads of divisions and their assistants.

Rev., s. 3939; 1901, c. 479, s. 4; 1913, c. 202.

4677. To investigate purchases, sources, and manufacture of fertilizer. The commissioner of agriculture shall investigate all complaints made by purchasers of fertilizers, and render such services as he may be able in bringing about an adjustment and satisfactory settlement of such complaints. It shall be his duty to ascertain as near as may be the actual cost of blood tankage, fish-scrap, nitrate of soda, cotton-seed meal, and other materials from which ammonia or nitrogen is obtained; the cost of all phosphate rock, together with a description of the treatment with acids, the grinding and general manufacture of acid phosphate, and the actual cost thereof as near as may be, and to communicate with dealers, both in this country and in Germany, as to the cost of muriate of potash, kainit, and other sources of potash, and to publish the same in *The Bulletin*; but he shall not expose to the public the name of any manufacturer in this state who may give him information on this subject, nor shall he divulge any information concerning the private business of any corporation or company manufacturing fertilizers solely in this state: Provided, such corporation or company is not a part or branch of any trust or combination. He shall also make and publish in every fertilizer bulletin a price-list of the market value of all the materials of which fertilizers are made, and revise the same as often as may be necessary.

Rev., s. 3940; 1901, c. 479, s. 4.

Part 3. Joint Committee on Agricultural Work

4678. Committee authorized; membership; organization. There is hereby authorized and legalized a joint committee to be known as "The Joint Committee for Agricultural Work," which shall be composed of four members of the board of agriculture and of four members of the board of trustees of the North Carolina State College of Agriculture and Engineering; and in addition thereto the governor of the state, the commissioner of agriculture, and the president of the North Carolina State College of Agriculture and Engineering shall be ex officio mem-

bers of said committee. The governor shall be ex officio chairman of the committee. The committee may elect a chairman pro tem., who shall preside in the absence of the governor, and the committee shall make a report annually to the governor on the work in its charge.

1917, c. 223, s. 1.

4679. Selection and term of members. The four members of the joint committee from each of the two boards shall be designated by the board of which they are members respectively, and shall serve on the committee during their terms as members of the board, unless excused from such service by their respective boards. The members already designated by the two boards for service on this committee shall continue to serve during their terms as board members.

1913, c. 68, s. 2.

4680. Purpose and authority of committee. For the purpose of preventing duplication and friction and for increasing efficiency in agricultural work in the state, the joint committee for agricultural work heretofore provided for shall have supervision and control of such agricultural work of the same kind or kinds as both the department of agriculture of the state and the North Carolina State College of Agriculture and Engineering are conducting or may conduct under authority of law, together with any work which either of these institutions may agree to place under the joint committee, and especially shall this joint committee have supervision and control of all experimental and investigational work in agriculture in the state. It shall determine and employ such workers as may be necessary for the conduct of the work, and regulate their salaries and duties.

1913, c. 68, ss. 3, 4.

4681. Funds for support; acts to be approved by board. The joint committee shall use funds as may be designated by law or which may be placed at its disposal by each of the two boards or by any benefactions in the conduct of the work outlined in the next preceding section. All actions of the joint committee shall be subject to the approval of the board of agriculture and the board of trustees of the North Carolina State College of Agriculture and Engineering.

1913, c. 68, s. 4.

Part 4. Powers and Duties of Department and Board

4682. Agricultural experiment station and branch stations. The work of investigation in agriculture required in this chapter may be designated by the board of agriculture as an agricultural experiment station, and the four test farms now in operation be and the same are hereby designated and established as branch experiment stations, to be conducted as at present under the auspices of the board of agriculture and out of its funds.

1907, c. 876, s. 5.

NOTE.—See Educational Institutions, s. 5825.

4683. Sale and conveyance of test farms; use of proceeds. The board of agriculture is hereby authorized and empowered to sell at the discretion of said board any land or lands which may be conveyed to the state or the department of agriculture for the purpose of conducting “test farms”; and that a deed, signed by

the commissioner of agriculture and attested by the secretary of the board of agriculture in the name of the state and the board of agriculture, shall be sufficient to convey title to the purchaser or purchasers. The proceeds of any sale may be used by the board of agriculture in the work of the department, except so much of said money as may be necessary to reimburse any one who has contributed to the purchase money. This amount shall be returned to the contributors.

1909, c. 97; 1917, c. 45.

4684. State chemist; duties of office. The department of agriculture shall employ an analyst or state chemist, skilled in agricultural chemistry, and such assistants as may be necessary. It shall be the duty of the state chemist to analyze such fertilizers and products as may be required by this department, and to aid as far as practicable in suppressing fraud in the sale of commercial fertilizers. He shall also, under the direction of the department, analyze for citizens of the state such samples of ores, minerals, mineral and potable waters, soils, marls and phosphates as may be deemed by the department of benefit to the development of the material interests of the state, when such samples are supplied under rules by the department, and he shall carry on such other investigations as the department may direct. He shall make regular reports to the department of all analyses, assays, and experiments made, which shall be furnished when deemed needful to such newspapers as will publish the same.

Rev., s. 3941; 1901, c. 479, s. 11.

4685. Inoculating culture for leguminous crops. The board of agriculture is hereby authorized to manufacture inoculating culture for leguminous crops and distribute it to the citizens of the state applying therefor at cost, the expense of manufacture and distribution to be paid for out of the receipts of the department of agriculture.

Ex. sess. 1913, c. 43.

4686. Timber conditions to be investigated and reported. The department of agriculture shall investigate and report upon the conditions of the timber in North Carolina, and recommend such legislation as will promote the growth thereof and preserve the same.

Rev., s. 3942; 1901, c. 479, s. 13.

4687. State handbook; exhibits at expositions; agricultural premiums. The department shall, as soon as practicable, prepare a convenient handbook, with the necessary illustrative maps, which shall contain all necessary information as to the mines, minerals, forests, soils, climates, waters and waterpowers, fisheries, mountains, swamps, industries, and all such statistics as are best adapted to give proper information of the attractions and advantages which this state affords to immigrants; and shall make an illustrative exposition thereof whenever practicable at international expositions; and shall have authority to offer premiums for the encouragement of agricultural and mechanical pursuits and the raising of improved live-stock in this state.

Rev., s. 3943; Code, s. 2199; 1876-7, c. 174, s. 15; 1883, c. 291, s. 4.

4688. Joint duties of commissioner and board. The commissioner of agriculture, by and with the consent and advice of the board of agriculture, shall:

1. *General.* Investigate and promote such subjects relating to the improvement of agriculture, the beneficial use of commercial fertilizers and composts, and for the inducement of immigration and capital as he may think proper; but he is especially charged—

2. *Commercial fertilizers.* With such supervision of the trade in commercial fertilizers as will best protect the interests of the farmers, and shall report to solicitors and to the general assembly information as to the existence or formation of trusts or combinations in fertilizers or fertilizing materials which are or may be offered for sale in this state, whereby the interests of the farmers may be injuriously affected, and shall publish such information in The Bulletin of the department;

3. *Cattle and cattle diseases.* With investigations adapted to promote the improvement of milk and beef cattle, and especially investigations relating to the diseases of cattle and other domestic animals, and shall publish and distribute from time to time information relative to any contagious diseases of stock, and suggest remedies therefor, and shall have power in such cases to quarantine the infected animals and to regulate the transportation of stock in this state, or from one section of it to another, and may coöperate with the United States department of agriculture in establishing and maintaining cattle districts or quarantine lines, to prevent the infection of cattle from splenic or Spanish fever. Any person wilfully violating such regulations shall be liable in a civil action to any person injured, and for any and all damages resulting from such conduct, and shall also be guilty of a misdemeanor;

Where quarantine regulations of the U. S. department of agriculture, relating to the transportation of cattle, which were adopted by the state board of agriculture, provided that no cattle originating in the quarantined districts as therein described should be moved into "that part of Burke south of the Catawba river," this court judicially knows that a shipment of cattle from Burlington to Morganton has been across the line fixed as a quarantine line: *State v. R. R.*, 141-846.

Laws 1901, chapter 479, section 4 (b), authorizing the commissioner of agriculture, with consent of the state board, "to establish and maintain cattle districts and quarantine lines, to prevent the infection of splenic or Spanish fever," confers power to make regulations prohibiting transportation of cattle: *Ibid.*

Laws 1901, chapter 479, s. 4 (b), authorizing commissioner of agriculture and the state board to make regulations concerning the transportation of cattle, is not an unwarranted delegation of legislative power, as the commissioner and board are only given power to establish the conditions and certain administrative regulations under and upon which the statute is made to apply: *Ibid.* Power to make regulations sustained; and an owner who allows his cattle to run at large is guilty, if they wander into prohibited territory: *State v. Garner*, 158-630.

4. *Insect pests.* With investigations relative to the ravages of insects and with the dissemination of such information as may be deemed essential for their abatement, and making regulations for destruction of such insects. The wilful violation of any of such regulations by any person shall be a misdemeanor;

5. *New agricultural industries.* With investigations and experiments directed to the introduction and fostering of new agricultural industries, adapted to the various climates and soils of the state, especially the culture of truck and market gardens, the grape and other fruits;

6. *Drainage and irrigation; fertilizer sources.* With the investigation of the subject of drainage and irrigation and publication of information as to the best methods of both, and what surfaces, soils, and locations may be most benefited by such improvements; also with the collection and publication of information in regard to localities, character, accessibility, cost, and modes of utilization of native mineral and domestic sources of fertilizers, including formulæ for composting adapted to the different crops, soils, and materials;

7. *Farm fences.* With the collection of statistics relating to the subject of farm fences, with suggestions for diminishing their cost, and the conditions under which they may be dispensed with altogether;

8. *Fish culture.* With the supervision of all measures for the propagation and culture of fish in the rivers and inland waters of the state, and to this end may avail himself of such aid as the fish commission of the United States may be induced to extend, and shall offer such encouragement as may be within his power to induce such commission to establish within this state one of its fish hatcheries, and secure the liberation within the waters of this state of the spawn or fry of such fishes as are best suited to our inland streams; he may inquire into the practicability of construction of fishways over the dams and other obstructions of the waters of the state and secure as far as possible the coöperation of mill owners, and with the enforcement of the provisions of law in reference to the free passage of fish through certain waterways in the state;

9. *Sales of fertilizers, seeds, and food products.* With the enforcement and supervision of the laws which are or may be enacted in this state for the sale of commercial fertilizers, seeds and food products, and with authority to make regulations concerning the same;

10. *Inducement of capital and immigration.* With the inducement of capital and immigration by the dissemination of information relative to the advantages of soil and climate and to the natural resources and industrial opportunities offered in this state, by the keeping of a land registry and by the publication of descriptions of agricultural, mineral, forest, and trucking lands which may be offered the department for sale; which publication shall be in tabulated form, setting forth the county, township, number of acres, names and addresses of owners, and such other information as may be needful in placing inquiring home-seekers in communication with landowners; and he shall publish a list of such inquiries in The Bulletin for the benefit of those who may have land for sale;

11. *Diversified farming.* With such investigations as will best promote the improvement and extension of diversified farming, including the rotation of crops, the raising of home supplies, vegetables, fruits, stock, grasses, etc.;

12. *Farmers' institutes.* With the holding of farmers' institutes in the several counties of the state, as frequently as may be deemed advisable, in order to instruct the people in improved methods in farming, in the beneficial use of fertilizers and composts, and to ascertain the wants and necessities of the various farming communities; and may collect the papers and addresses made at these institutes and publish the same in pamphlet form annually for distribution among the farmers of the state. He may secure such assistants as may be necessary or beneficial in holding such institutes.

13. *Publication of bulletin.* The commissioner shall publish bulletins which shall contain a list of the fertilizers and fertilizing materials registered for sale each year, the guaranteed constituents of each brand, reports of analyses of fertilizers, the dates of meeting and reports of farmers' institutes and similar societies, description of farm buildings suited to our climate and needs, reports of interesting experiments of farmers, and such other matters as may be deemed advisable. The department may determine the number of bulletins which shall be issued each year.

14. *Reports to legislature.* He shall transmit to the general assembly at each session a report of the operations of the department with suggestions of such legislation as may be deemed needful.

15. *State museum.* He shall keep a museum or collection to illustrate the cultural and other resources and the natural history of the state.

Rev., ss. 3294, 3724, 3944; 1901, c. 479, s. 4; 1917, c. 16.

Part 5. Coöperation of Federal and State Governments in Agricultural Work

4689. **Legislative assent to Adams act for experiment station.** Legislative assent be and the same is hereby given to the purpose of an act of congress approved March sixteenth, one thousand nine hundred and six, entitled "An act to provide for an increased annual appropriation for agricultural experiment stations, and regulating the expenditure thereof," known as the Adams act, and the money appropriated by this act be and the same is hereby accepted on the part of the state for the use of the agricultural experiment station, and the whole amount shall be used for the benefit of the said agricultural experiment station, in accordance with the act of congress making appropriations for agricultural experiment stations and governing the expenditure thereof.

1907, c. 793.

NOTE.—See Educational Institutions of State, s. 5825.

ART. 2. COMMERCIAL FERTILIZERS

4690. **Packages to be branded with specified particulars; copy to be filed.** All persons, companies, manufacturers, dealers, or agents, before selling or offering for sale in this state any commercial fertilizer or fertilizer material, shall brand or attach to each bag, barrel, or package the brand name of the fertilizer, the weight of the package, the name and address of the manufacturer, and the guaranteed analysis of the fertilizer, giving the valuable constituents of the fertilizer in minimum percentages only, and also the sources of nitrogen or ammonia and potash. These items shall be branded or printed on the bag or package in the following order:

1. Weight of each package in pounds.
2. Brand name or trade-mark.
3. Guaranteed analysis.
4. Available phosphoric acid, per cent.
5. Nitrogen (or equivalent in ammonia), per cent.
6. Potash, per cent.
7. Name and address of the manufacturer.

8. A plainly printed tag, or brand, or print on percentage of water-soluble nitrogen.
9. Where potash is claimed as sulphate it must be derived from high-grade commercial sulphate of potash.

In bone-meal, tankage, or other products, where the phosphoric acid is not available to laboratory methods, but becomes available on the decomposition of the products in the soil, the phosphoric acid shall be claimed as total phosphoric acid, unless it be desired to claim available phosphoric acid also, in which latter case the guarantee must take the form above set forth. In the case of bone-meal and tankage, manufacturers may brand on the bags information showing the fineness of the product, provided it takes a form approved by the department of agriculture. A copy of the brand or stamp on the bag or other package, or on the label attached thereto (all of which must comply with the above requirements), shall be filed with the department of agriculture on or before delivery of such fertilizer to dealers, agents, and consumers in this state, which brand or stamp shall be uniformly used during the fiscal year for which tags have been issued. Such brand, label, or stamp shall truly set forth the data required above.

1917, c. 143, s. 1.

This and the following sections in this article are intended to protect the public against the sale of worthless fertilizers: *State v. Oil Co.*, 154-635. Section cited, *Carson v. Bunting*, 154-530; *Guano Co. v. Live Stock Co.*, 168-442; *Fertilizer Works v. Aiken*, 175-398; *Carter v. McGill*, 168-507.

4691. Rules to enforce statute; violation misdemeanor. The board of agriculture is empowered and directed to make such rules and regulations as are necessary to a proper carrying into effect of the provisions of this article, and to provide for all such tags as manufacturers may demand, upon paying the tax therefor. Any person wilfully violating any of the regulations made by the board of agriculture in connection with the provisions of this article shall be guilty of a misdemeanor.

Rev., s. 3321; 1901, c. 479, s. 4, subsec. 9.

4692. Sources of ingredients to be disclosed to department. There shall be delivered to the department a statement of the materials or sources from which the phosphoric acid, nitrogen, and potash are each derived in each brand of goods registered. The department of agriculture shall, under rules which it may formulate, furnish to any person applying for the same the sources of nitrogen, potash, and available phosphoric acid contained in any brand of fertilizer registered with the department. If the source of the ingredient is changed, notification thereof shall be promptly furnished to the department.

1917, c. 143, s. 2.

4693. Brand names; registration; duplication of brand. If the same fertilizer is sold under more than one name, a statement shall be furnished to the commissioner as to what brands are identical. A brand name entered by one person shall not be allowed to be registered by another; and no brand or name shall be allowed to be registered which is so nearly similar to another as to lead to uncertainty, confusion, or fraud. The person whom the records of the department show to have first registered the name shall be permitted to retain it, subject,

however, to appeal to the board to determine who is entitled to the brand; but the action of the board shall be without prejudice to the legal rights of the parties to the brand or trade-mark. No brand or name once registered shall be changed to a lower grade at any subsequent registration. The commissioner shall publish a list of brands or trade-marks registered with the department.

1917, c. 143, s. 3.

4694. Use of terms “high grade” and “standard.” The words “high grade” shall not appear upon any bag or other package of any complete fertilizer which complete fertilizer contains, by its guaranteed analysis, less than eight per cent available phosphoric acid, two and forty-seven one-hundredths per cent nitrogen (equivalent to three per cent ammonia), and two per cent potash; that the word “standard” shall not appear upon any bag or package of any complete fertilizer which contains, by its guaranteed analysis, less than eight per cent available phosphoric acid, one and sixty-five one-hundredths per cent nitrogen (equivalent to two per cent ammonia), and two per cent potash, or a grade or analysis of equal total commercial value; that the words “high grade” shall not appear upon any bag or package of any acid phosphate with potash which shall contain, by its guaranteed analysis, less than thirteen per cent available phosphoric acid and one per cent potash, or a grade or analysis of equal total commercial value; that the word “standard” shall not appear upon any bag or other package of acid phosphate with potash which shall contain, by its guaranteed analysis, less than eleven per cent available phosphoric acid and one per cent potash, or a grade or analysis of equal total commercial value; that the words “high grade” shall not appear upon any bag or other package of any plain acid phosphate which shall contain, by its guaranteed analysis, less than sixteen per cent available phosphoric acid; and, lastly, that the word “standard” shall not appear upon any bag or other package of any plain acid phosphate which shall contain, by its guaranteed analysis, less than fourteen per cent of phosphoric acid. It is further hereby provided that no complete fertilizer, acid phosphate with potash, and phosphate with nitrogen, or plain acid phosphate, shall be offered for sale in this state which contains less than twelve per cent of total plant food, namely, available phosphoric acid, nitrogen, or potash, either singly or in combination, except potash in combination with lime, which shall contain not less than two per cent of potash: Provided, that in mixed fertilizers there shall be claimed not less than one per cent of potash and eighty-two one-hundredths per cent of nitrogen (equivalent to one per cent ammonia) when one or both are present in the same mixture; and also, that mixed fertilizers known as superphosphates and containing only phosphoric acid and ammonia may have only ten per cent of plant food, and shall be known as “high grade” when containing six per cent of phosphoric acid and four per cent of ammonia.

No commercial fertilizer shall be sold or offered or exposed for sale or use within this state as to which the words “high grade” or “standard” are prohibited by this section, unless the words “low grade” are printed in two-inch letters in a conspicuous place upon the package of said commercial fertilizer.

1917, c. 143, s. 4.

4695. Sale below guaranteed quality; duty of commissioner; purchaser's option. Whenever the commissioner of agriculture shall be satisfied that any

fertilizer is five per cent below the guaranteed value in plant food it shall be his duty to assess such deficiency against the manufacturer of the fertilizer and require that twice the value of the deficiency be made good to any person who purchases for his own use such low-grade fertilizer; and should any fertilizer fall as much as ten per cent below the guaranteed value in plant food it shall be his duty to assess three times the value of such deficiency against the manufacturer of the fertilizer and require the same to be paid to the consumer of such fertilizer; and the commissioner may seize any fertilizer belonging to such manufacturer if the deficiency shall not be paid within thirty days after notice to such manufacturer. If the commissioner shall be satisfied that such deficiency in plant food was due to the intention of the manufacturer of same to defraud, then he shall assess and collect from the said manufacturer double the amount of the deficiency which he would have assessed and collected as hereinbefore provided, and pay the same over to the consumer of such fertilizer. Any excess of any ingredient above the guarantee shall not be credited to the deficiency of any other ingredient if the deficiency is more than fifteen per cent: that is, excess of phosphoric acid or ammonia, or potash, cannot be credited to the deficiency in any other of these ingredients, and in assessing deficiencies arising in this connection the deficiency shall be assessed at four times the value of such deficiencies, such deficiencies to be assessed and paid as hereinbefore provided. In fixing the penalties mentioned in this section, or any other section of this article, the commissioner of agriculture shall estimate them by the wholesale price at the factory at the time of contract. If any manufacturer shall resist such collection or payment, the commissioner shall immediately publish the analysis and facts in the bulletin and in one or more newspapers in the state, to be selected by him. The agricultural department shall secure sufficient chemists and assistants, and provide the necessary equipment to enable the department to make a report of the chemical analysis of all fertilizer samples sent to the department by the purchaser or consumer, within twenty days from the time the same is received by the department, and they shall so make reports unless otherwise requested by the sender, and shall also publish a bulletin of all analyses on the first of each month for the preceding month: Provided, that if the analysis made by the department shall show more than twelve and one-half per cent deficiency in the whole, the purchaser may, in lieu of accepting the penalty as provided by law, cancel the contract of purchase; but he must within five days after receipt of said analysis notify the seller of his intention to cancel the contract and his refusal to keep the said fertilizer.

1917, c. 143, s. 5; 1919, c. 120, s. 1.

The measure of damages is the abatement of the price: *Fertilizer Works v. McLawhorn*, 158-274; *Guano Co. v. Live Stock Co.*, 168-442; *Carson v. Bunting*, 154-530. This section does not interfere with the remedies of the parties to the contract: *Tomlinson v. Morgan*, 166-557. In an action for the price the defendant may show that the fertilizer was worthless: *Carter v. McGill*, 168-507. Diminution in crops may, under proper conditions, be shown in evidence as to breach of warranty of quality: *Tomlinson v. Morgan*, 166-557.

4696. Certain ingredients prohibited. It shall be unlawful to sell or offer for sale in this state any fertilizer or fertilizer material which contains hair, hoof meal, horn, leather scraps, or other deleterious substances not available as food for plants, but in which fertilizer or fertilizer material such forbidden materials

aid in making up the required or guaranteed analysis. Whenever the analysis by the department shall show the presence of any of these unlawful materials in goods registered for sale, publication shall be made in the next monthly bulletin and in one or more newspapers, to be selected by the commissioner, giving the name and brand of the goods and the unlawful substance contained in its composition. No manufacturer or seller of such goods shall be allowed to collect pay for same, and when payment has been made it shall be returned by the seller to the purchaser. A copy of the bulletin containing the statement of the presence of unlawful material in the named goods shall be evidence in any court in this state in bar of payment and for recovery of money paid for goods so named. The presence of any forbidden material shall vitiate the whole: Provided, that the manufacturers who desire to use any such material may do so under such regulations as the board may prescribe.

Any person who shall wilfully sell or offer for sale any fertilizer or fertilizer material containing the substances declared by this section to be deleterious shall be guilty of a misdemeanor.

Rev., s. 3818; 1901, c. 479, s. 9; 1917, c. 143, s. 6.

4697. Collection and analysis of samples; analyst's certificate as evidence. The department of agriculture shall have the power at all times and at all places to have collected by its inspector samples of any commercial fertilizer or fertilizer material offered for sale in the state, and have the same analyzed; and such samples shall be taken from at least ten per cent of the lot from which they may be selected: Provided, that no sample shall be drawn from less than ten bags of any one lot or brand.

The samples must be drawn in the presence of either the agent or seller or dealer, or some other representative of the manufacturer: Provided, that when the agent or seller or dealer, or local representative of the manufacturer, is not present or refuses to act, two disinterested persons may act as witnesses.

The purchaser or consumer, or the agent of either, may take fertilizer samples under the following rules and regulations: When any purchaser or consumer, or agent of either, desires to take a sample of any fertilizer or fertilizer material, he may take such sample according to the rules prescribed by the department of agriculture in the presence of a county or local representative designated by the manufacturer, and notice of which shall be given by the manufacturer on the bill of lading, or, in case there is no county or local representative, or he is unable to serve for any cause, in the presence of an agent, seller, or dealer of the manufacturer and two disinterested freeholders; or, in case the agent, or seller, or dealer, or local representative of the manufacturer refuses to witness the drawing of such sample, a sample may be drawn in the presence of three disinterested freeholders: Provided, such sample or samples shall be drawn with the same kind of instrument used by the inspectors of the department of agriculture in taking samples, the sample to be thoroughly mixed as prescribed by the rules of the department of agriculture, divided into two parts, each part to be placed in a suitable vessel, securely sealed, properly labeled, and one part sent to the department of agriculture for analysis, and the other part to the manufacturer; and a suitable statement shall be signed by the parties taking, or witnessing the taking of the sample covering the matter; such statement or statements to be also sent to the department of agriculture and the manufacturer.

The department of agriculture shall make additional rules and regulations under and by which the purchaser or consumer, or agent of either, may take the sample or samples of fertilizer or fertilizer material as herein provided, and forward the same to the department for analysis under the provisions of this article: Provided, that no sample may be taken except within thirty days after the actual delivery to the consumer except by the state fertilizer inspector.

In the trial of any suit or action wherein there is called in question the value or composition of any fertilizer, a certificate signed by the state chemist and attested with the seal of the department of agriculture, setting forth the analysis made by the state chemist of any sample of said fertilizer drawn under the provisions of this article, and analyzed by him under the provisions of the same, shall be prima facie proof that the fertilizer was of the value and constituency shown by his said analysis. And the said certificate of the state chemist shall be admissible in evidence to the same extent as if it were his deposition taken in said action in the manner prescribed by law for the taking of depositions. The department shall refuse to analyze any sample of commercial fertilizer that is not drawn and forwarded to the department in accordance with the regulations which it may adopt for the carrying out of this article: Provided, that no suit for damages from results of use of fertilizer may be brought except after chemical analysis showing deficiency of ingredients, unless it shall appear to the department of agriculture that the manufacturer of said fertilizer in question has, in the manufacture of other goods offered in this state during such season, employed such ingredients as are outlawed by the provisions of this article, or unless it shall appear to the department of agriculture that the manufacturer of such fertilizer has offered for sale during that season any kind of dishonest or fraudulent goods.

Nothing in this article shall impair the right of contract.

1917, c. 143, s. 7; 1919, c. 120, ss. 2, 3.

The parties may make a special contract as to liability for damages; otherwise this section will control: *Fertilizer Works v. Aiken*, 175-398. Where the seller warrants the fertilizer to be of the specified analysis, but not as to results, there is no implied warranty; but evidence may be given as to effects to show that it did not comply with the specifications: *Guano Co. v. Live Stock Co.*, 168-442. As to measure of damages to be recovered, see *Carson v. Bunting*, 154-530; *Fertilizer Co. v. McLawhorn*, 158-274; *Tomlinson v. Morgan*, 166-557.

4698. Tax tags on shipments in bulk. If any manufacturer, dealer, agent, or other seller of fertilizer shall desire to ship in bulk any fertilizer or fertilizer material to an amount of five tons or more, the said manufacturer or seller of fertilizer shall send with the bill of lading sufficient tax tags to pay the tax on the amount of goods, and the agent of the railroad or other transportation company shall deliver the tags to the consignee when the goods are delivered. The said shipper shall also notify the commissioner of agriculture of the points to and from which the goods are shipped and the date of forwarding: Provided, the analysis thereof and the source or sources from which the same are derived and the other regulations required of shippers in bags shall apply to the said shippers in bulk.

1917, c. 143, s. 8.

4699. Carriers to furnish statements of fertilizers transported. It shall be lawful for the department of agriculture to require the officers, agents, or mana-

gers of any railroad, steamboat, or other transportation company transporting fertilizers or fertilizer material for delivery in this state to furnish monthly statements of the quantity of such fertilizers, with the names of the consignor and consignee, delivered on their respective lines at any and all points within the state; and the department is hereby empowered to compel such officers, agents, or managers to submit their books for examination, if found expedient to do so. Persons failing to furnish statements as required by this section shall be guilty of a misdemeanor.

Rev., s. 3819; 1901, c. 479, s. 10; 1917, c. 143, s. 9.

4700. Forfeiture for unauthorized sale; release from forfeiture. All fertilizers and fertilizer material sold or offered for sale contrary to the provisions of this article shall be subject to seizure, condemnation, and sale by the commissioner. The net proceeds of such sale shall be placed in the general fund of the department. The commissioner, however, may, in his discretion, release the fertilizers so seized and condemned upon payment of the required tax or charge, a fine of ten dollars, and all cost and expenses incurred by the department in any proceedings connected with such seizure and condemnation, and upon compliance with all other requirements of this article.

1917, c. 143, s. 10.

4701. Method of seizure and sale on forfeiture. Such seizure and sale shall be made under the direction of the commissioner by any officer or agent of the department. The sale shall be made at the courthouse door in the county in which the seizure is made, after thirty days advertisement in some newspaper published in such county, or if no newspaper is published in such county, then by like advertisement in a newspaper published in the nearest county thereto having a newspaper. The advertisement shall state the brand or name of the goods, the quantity, and why seized and offered for sale.

1917, c. 143, s. 11.

4702. Inspection tax on fertilizer; tax tags. For the purpose of defraying expenses connected with the inspection of fertilizers and fertilizer material in this state, there shall be paid to the department of agriculture a charge of twenty cents per ton on such fertilizers and fertilizer material, except that which is sold to a manufacturer for the sole purpose of use in the manufacture of fertilizers, for each fiscal year ending November thirtieth, which shall be paid before a delivery to agents, dealers, or consumers in this state; but the commissioner, with the advice and consent of the board, shall have discretion to exempt such natural material as may be deemed expedient. Each bag, barrel, or other package of such fertilizer or fertilizer material shall have attached thereto a tag stating that all charges specified in this section have been paid, and the commissioner, with the advice and consent of the board, is hereby empowered to prescribe a form of such tags, and to adopt such regulations as will insure the enforcement of this law. Whenever any manufacturer of fertilizer or fertilizer material shall

have paid the charges required by this section his goods shall not be liable to further tax, whether by city, town, or county: Provided, this shall not exempt from ad valorem tax.

1917, c. 143, s. 12.

This section does not exempt the property from ad valorem tax: *Guano Co. v. Biddle*, 158-212.

4703. Sale without tag; misuse of tag; penalty; forfeiture. Every merchant, trader, manufacturer, broker, or agent who shall sell or offer for sale any commercial fertilizer or fertilizer material without having attached thereto such labels, stamps, and tags as are required by law, or who shall use the required tags a second time to avoid the payment of the tonnage charge, and every person who shall aid in the fraudulent selling or offering for sale of any such fertilizer, shall be liable to a penalty of the price paid the manufacturer for each separate bag, barrel, or package sold, or offered for sale, or removed, to be recovered by the commissioner of agriculture by suit brought in the name of the state, and any amount so recovered shall be paid, one-half to the informer and one-half to the state treasurer for the use of the department of agriculture. If any such fertilizer shall be condemned as provided by law, it shall be the duty of the department to have an analysis made of the same and cause printed tags or labels expressing the true chemical ingredients thereof to be put upon each bag, barrel, or package, and shall fix the commercial value at which it may be sold. It shall be unlawful for any person to sell or offer for sale or remove any such fertilizer, or for any agent of any railroad or other transportation company to deliver any such fertilizer in violation of this section, and any person who shall sell or offer for sale or remove any fertilizer in violation of the provisions of this section shall be guilty of a misdemeanor.

Rev., ss. 3820, 3822; 1901, c. 479, ss. 5, 8; 1917, c. 143, s. 13; 1919, c. 13, s. 3.

Party suing for penalty, and not the department of agriculture, is proper party plaintiff: *Goodwin v. Fertilizer Works*, 119-120. Section constitutional: *Ibid.* When complaint alleges violation of sections of this article and this is proved, the court will give penalty: *Carson v. Bunting*, 154-530. The penalty does not apply to one purchasing for use on his farm: *Johnson v. Carson*, 161-371. Indictment for violation: *State v. Oil Co.*, 154-635.

ART. 3. COTTON-SEED MEAL

4704. Cotton-seed meal defined; inspection tax. Cotton-seed meal is a product of the cotton seed only, composed principally of the kernel with such portion of the fiber or hull and oil as may be left in the course of manufacture of cotton-seed oil, and when sold for use as fertilizer or feed shall be subject to an inspection tax of twenty cents per ton and be subject to inspection as other fertilizers or fertilizing materials, unless sold to manufacturers for use in manufacturing fertilizers or feed.

1917, c. 242, s. 1.

4705. Bags to be branded with specified particulars. All cotton-seed meal offered for sale, unless sold to manufacturers for use in manufacturing fertilizers or feed, shall have plainly branded on the bag containing it, or on the tag attached thereto, the following data:

1. Cotton-seed meal (with brand and grade).
2. Weight of package.
3. Ammonia and protein.
4. Name and address of manufacturer.

1917, c. 242, s. 2.

Failure to comply with this section subjects the seller to the penalty provided in section 4703: *Carson v. Bunting*, 154-530. Section referred to in *State v. Oil Co.*, 154-635; *Johnson v. Carson*, 161-371; *Guano Co. v. Live Stock Co.*, 168-442.

4706. Grades and standards established. No person, firm, or corporation shall offer for sale any cotton-seed meal except as provided in the preceding section, graded and classed as follows:

1. Prime cotton-seed meal by analysis must contain at least seven and one-half per cent of ammonia or thirty-eight and fifty-six one-hundredths per cent of protein.

2. Good cotton-seed meal by analysis must contain at least seven per cent of ammonia, or thirty-six and no one-hundredths per cent of protein.

3. Ordinary cotton-seed meal by analysis must contain at least six and one-half per cent of ammonia, or thirty-three and forty-four hundredths per cent of protein.

1917, c. 242, s. 3.

The sections in this article are intended to promote the sale of fertilizers containing plant food of sufficient quantity and quality to protect from fraud and imposition: *State v. Faulkner*, 175-787. Section cited in *Johnson v. Carson*, 161-371.

4707. Rules to enforce statute; misdemeanor. The board of agriculture is empowered and directed to make such rules and regulations as are necessary to a proper carrying into effect of the provisions of this article, and to provide for all such tags as manufacturers may demand, upon paying the tax therefor. Any person wilfully violating any of the regulations made by the board of agriculture in connection with the provisions of this article shall be guilty of a misdemeanor.

1917, c. 242, s. 4.

4708. Sales without tag; misuse of tag; penalty; forfeiture. Every merchant, trader, manufacturer, or agent who shall sell or offer for sale any cotton-seed meal without having attached thereto such labels, stamps, and tags as are required by law, or who shall use the required tag a second time to avoid the payment of the tonnage charge, and every person who shall aid in the fraudulent selling or offering for sale of any cotton-seed meal, shall be liable to a penalty of the price paid the manufacturer for each separate bag, barrel, or package sold, offered for sale, or removed, to be recovered by the commissioner of agriculture by suit brought in the name of the state, and any amount so recovered shall be paid one-half to the informant and one-half to the state treasurer for the use of the department of agriculture. If any such cotton-seed meal shall be condemned, as provided by law, it shall be the duty of the department to have an analysis made of the same; cause printed tags or labels expressing the proper grade to be put upon each bag, barrel, or package, and shall fix the commercial value at which it may be sold; and it shall be unlawful for any person to sell, offer for

sale, or remove any such cotton-seed meal, or for any agent of any railroad or other transportation company to deliver any such cotton-seed meal in violation of this section.

1917, c. 242, s. 4.

The penalty does not apply to a purchaser for use on his farm: *Johnson v. Carson*, 161-371. For damages to be recovered, see cases cited under section 4697. Section referred to in *Carson v. Bunting*, 154-530; *State v. Oil Co.*, 154-635; *State v. Faulkner*, 175-787.

4709. Sales contrary to act a misdemeanor. Any person, firm, or corporation who shall sell or offer for sale or shall act as agent of or broker for the manufacturer of or dealer in any cotton-seed meal contrary to the provisions above set forth shall be guilty of a misdemeanor.

Rev., 3814; 1917, c. 242, s. 5; 1919, c. 13, s. 2.

This applies only to the manufacturer, owner or agent who sells with an opportunity to examine and test the article: *State v. Faulkner*, 175-787.

4710. Forfeiture for unauthorized sale; release from forfeiture. All cotton-seed meal sold or offered for sale contrary to the provisions above set forth shall be subject to seizure, condemnation, and sale by the commissioner of agriculture. The net proceeds from such sale shall be placed in the general fund of the department and accounted for upon its books. The commissioner, however, shall have the discretion to release the meal so seized and condemned upon compliance with the law as set forth above and the payment of all costs and expenses incurred by the department in any proceedings connected therewith.

1917, c. 242, s. 5.

4711. Method of seizure and sale on forfeiture. Such seizure and sale shall be made under the direction of the commissioner of agriculture by an officer or agent of the department; the sale to be made at the courthouse door in the county in which the seizure is made, after thirty days advertisement in some newspaper published in said county, or if no newspaper is published in said county, then by like advertisement in a newspaper published in the nearest county thereto having a newspaper. The advertisement shall state the grade of the meal, the quantity, why seized and offered for sale.

1917, c. 242, s. 5.

4712. Collection and analysis of samples. The department of agriculture shall have the same authority and powers for taking and analyzing samples of cotton-seed meal as are provided in case of commercial fertilizers and fertilizer materials; and the same procedure as to law and regulations shall be followed in taking such samples of cotton-seed meal as are prescribed and followed for taking samples of fertilizer and fertilizer materials.

1919, c. 271.

4713. Sales below guaranteed quality; duties of commissioner. When the commissioner of agriculture shall be satisfied that any cotton-seed meal is five per cent below the guaranteed analysis, it shall be his duty to assess twice the value of said deficiency against the manufacturer, and if said cotton-seed meal shall fall as much as ten per cent below the guaranteed analysis it shall be his duty to assess three times the value of said meal and require that his findings of said

deficiency be made good to all persons who, in the opinion of the commissioner, have purchased the said meal; and the commissioner may seize any meal belonging to said company, to the value of the deficiency, if the deficiency shall not be paid within thirty days after notice to the company. If the commissioner shall be satisfied that the deficiency in analysis was due to intention or fraud of the manufacturer, then the commissioner shall assess and collect from the manufacturer twice the amount above provided for and pay over the same to parties who purchased said meal. That if any manufacturer shall resist such collection or payment, the commissioner shall immediately publish the analysis and the facts in the bulletin and in such newspapers in the state as he may deem necessary.

1917, c. 242, s. 7.

See cases cited under section 4697.

4714. Adulteration prohibited. It shall be unlawful for any manufacturer to adulterate cotton-seed meal in the process of manufacture or otherwise.

1917, c. 242, s. 8.

ART. 4. PULVERIZED LIMESTONE AND MARL

4715. Board of agriculture authorized to make and sell lime to farmers. The North Carolina board of agriculture is authorized and directed, for the purpose of furnishing marl or limestone to the farmers of the state, to make such arrangements as they deem advisable for this purpose, and to this end may lease or purchase oyster shells in large quantities and beds of limestone, and erect machinery suitable for the preparation of the material for use by the farmers; and any lime so prepared and any by-products shall be sold for agricultural purposes to the citizens of the state at a reasonable cost which shall produce an amount of money sufficient to maintain and operate the plant.

1919, c. 182, s. 1.

4716. Convict labor authorized. With the approval of the governor, when requested by the board of agriculture, the superintendent of the penitentiary may furnish a superintendent with a squad of able-bodied convicts, not to exceed fifty, to do such work as the commissioner, with the authority of the board, may deem necessary to mine, prepare, load and dispose of the material. The board shall pay the state quarterly such amount as shall be agreed upon by the superintendent of the penitentiary and the board of agriculture for their work, out of the proceeds of the sales, and the state shall guard, feed, clothe, and work such convicts: Provided, that after the first year's operations the expenses of the work shall not exceed the amount of the sales.

1919, c. 182, s. 2.

4717. Power to make regulations; reports required. The board of agriculture is authorized to make all regulations necessary to execute the provisions of this article and shall report annually to the governor and furnish him itemized statements of the receipts and expenditures, which shall be published in the report of the commissioner of agriculture to the legislature.

1919, c. 182, s. 3.

4718. Analyses and guaranty. All pulverized limestone and marl sold or offered for sale for agricultural purposes in the state shall have the analyses guaranteed by the manufacturers. These analyses shall show the percentage of calcium carbonate and the percentage of magnesium carbonate in the finished product.

1919, c. 182, ss. 4, 5.

4719. Percentage of carbonates required. Limestone or marl offered or exposed for sale to the farmers of the state for agricultural purposes must show an average of at least seventy per cent calcium carbonate; domolitic limestone at least fifty per cent calcium carbonate; and a total carbonates equivalent of not less than eighty per cent; and shell marl at least sixty per cent calcium carbonate.

1919, c. 182, s. 6.

4720. Degree of fineness provided. All pulverized limestone, except shell marl, offered or exposed for sale to the farmers of the state for agricultural purposes shall be ground to a sufficient degree of fineness to pass a screen of not less than ten meshes to the linear inch.

1919, c. 182, s. 7.

4721. Manufacturers to register and file statement of analysis. All manufacturers of ground limestone and marl who shall offer any of their goods for sale in this state shall annually register with the commissioner of agriculture, along with a statement of the analysis of the finished product, a statement showing the name and general average composition of the raw material—limestone, domolitic limestone, marl, etc., from which the finished product is manufactured.

1919, c. 182, s. 8.

4722. Inspection of factories and shipped products. The commissioner and board of agriculture are authorized, empowered and directed to inspect all quarries, grinders, and other places of manufacture, as well as all consignments of pulverized limestone and marl shipped into North Carolina for agricultural purposes, with a view to enforcing the provisions of this article.

1919, c. 182, s. 9.

4723. Violation of article a misdemeanor. All persons or firms failing to register their goods before the first of July each year, or failing to comply with the provisions of this article, shall be guilty of a misdemeanor and, on conviction, shall be fined not less than ten nor more than fifty dollars for the first offense, and not less than one hundred dollars for each subsequent offense.

1919, c. 182, s. 10.

ART. 5. COMMERCIAL FEEDING STUFFS

4724. Packages to be marked with statement of specified particulars. Every lot or parcel of concentrated commercial feeding stuff sold, offered or exposed for sale within this state shall have affixed thereto or printed thereon, in a conspicuous place on the outside thereof, a legible and plainly printed statement in the English language clearly and truly certifying the weight of the package; the name, brand, or trade-mark under which the article is sold; the name

and address of the manufacturer, jobber, or importer; the names of each and all ingredients of which the article is composed; a guarantee that the contents are pure and unadulterated, and a statement of the maximum percentage it contains of crude fiber, and the percentage of crude fat, and the percentage of crude protein, and the percentage of carbohydrates, allowing one per cent of nitrogen to equal six and one-fourth per cent of protein, all four constituents to be determined by the methods in use at the time by the Association of Official Agricultural Chemists of the United States.

1909, c. 149, s. 1.

4725. Weight of packages prescribed. All concentrated commercial feeding stuffs shall be in standard-weight bags or packages of twenty-five, fifty, seventy-five, one hundred, one hundred twenty-five, one hundred fifty, one hundred seventy-five, and two hundred pounds.

1909, c. 149, s. 1.

4726. "Concentrated commercial feeding stuffs" defined. The term "concentrated commercial feeding stuffs" shall be held to include all feeds used for live stock and poultry, except hays, straws, and corn stover, when the same are not mixed with other materials, nor shall it apply to the whole seeds or grains of cereals when not mixed with other materials.

1909, c. 149, s. 2.

4727. Copy of statement and sample filed for registration. Each and every manufacturer, importer, jobber, agent, or seller, before selling, offering or exposing for sale in this state any concentrated commercial feeding stuff, shall, for each and every feeding stuff bearing a distinguishing name or trade-mark, file for registration with the commissioner of agriculture a copy of the statement required in section 4724 above, and accompany said statement, on request, by a sealed glass jar or bottle containing at least one pound of such feeding stuff to be sold, exposed or offered for sale, which sample shall correspond within reasonable limits to the feeding stuff which it represents in the percentages of crude protein, crude fat, crude fiber, and carbohydrates which it contains.

1909, c. 149, s. 3.

4728. Agent released by statement of manufacturer. When a manufacturer, importer, or jobber of any concentrated commercial feeding stuffs files a statement, as required by the preceding section, no agent or seller of such manufacturer, importer, or jobber, shall be required to file such statement.

1909, c. 149, s. 4.

4729. Power to refuse or to cancel registration. The commissioner of agriculture shall have the power to refuse the registration of any concentrated commercial feeding stuff under a name which would be misleading as to the materials of which it is composed, or when the names of each and all ingredients of which it is composed are not stated, or where it does not comply with the standards and rulings adopted by the board of agriculture. Should any concentrated com-

mercial feeding stuffs be registered and it is afterwards discovered that they are in violation of any of the provisions of this article, the commissioner of agriculture shall have the power to cancel such registration.

1909, c. 149, s. 5.

4730. Inspection tax on feeding stuffs; tax tags. Each and every manufacturer, importer, jobber, agent, or seller of any concentrated commercial feeding stuff, as defined above in this article, shall pay to the commissioner of agriculture an inspection tax of twenty cents per ton for each ton of such commercial feeding stuff sold, offered or exposed for sale or distributed in this state, and shall affix to or accompany each car shipped in bulk, and to each bag, barrel, or other package of such concentrated commercial feeding stuff, a tag or stamp to be furnished by the commissioner of agriculture stating that all charges specified in this section have been paid: Provided, whenever any concentrated commercial feeding stuff, as herein above defined, is kept for sale in bulk, stored in bins or otherwise, the manufacturer, dealer, jobber, or importer keeping the same for sale shall keep on hand cards of proper size, upon which the statement required in section 4724 is plainly printed; and if the feeding stuff is sold at retail in bulk, or if it is put up in packages belonging to the purchaser, the manufacturer, dealer, jobber, or importer shall furnish the purchaser with one of said cards upon which is or are printed the statement or statements described in this section, together with sufficient tax tags or stamps to cover same: Provided, that the inspection tax of twenty cents per ton shall not apply to whole seeds and grains when not mixed with other materials. It is further provided that, upon demand, said inspection tags or stamps shall be redeemed by the department issuing said tags or stamps, upon surrender of same, accompanied by an affidavit that the same have not been used: Provided, said tags or stamps shall be returned for redemption within the time fixed by the board of agriculture: Provided further, that nothing in this article shall be construed to restrict or prohibit the sale of concentrated commercial feeding stuff in bulk to each other by importers, manufacturers, or manipulators who mix concentrated commercial feeding stuff for sale. The commissioner of agriculture is hereby empowered to prescribe the form of such tax tags or stamps.

1909, c. 149, s. 6.

Upon a sale of feeding stuff which is below grade and without tags, what damages the purchaser may recover: *Jennette v. Hay and Grain Co.*, 158-156.

4731. Sale unauthorized by article or below grade; forfeiture; release from forfeiture. Any manufacturer, importer, jobber, agent, or dealer who shall sell, offer or expose for sale or distribution in this state, any concentrated commercial feeding stuff, as defined above in this article, without complying with the requirements of the preceding sections of this article, or who shall sell or offer or expose for sale or distribution any concentrated commercial feeding stuff which contains substantially a smaller percentage of crude protein or crude fat or carbohydrates or a larger percentage of crude fiber than certified to be contained, or who shall adulterate any feeding stuff with foreign, mineral, or other substance or substances, such as rice chaff or hulls, peanut shells, corn cobs, oat hulls, or similar materials of little or no feeding value, or with substances injurious to the health of domestic animals, shall be guilty of a violation of this article, and the lot

of feeding stuff in question shall be subject to seizure, condemnation, and sale by the commissioner of agriculture, and the proceeds from said sales shall be covered into the state treasury for the use of the department executing the provisions of this article. The commissioner of agriculture, however, may in his discretion release the feeding stuff so withdrawn when the requirements of the provisions of this article have been complied with, and upon payment of all costs and expenses incurred by the department of agriculture in any proceedings connected with such seizure and withdrawal.

1909, c. 149, s. 7.

4732. Method of seizure and sale on forfeiture. Such seizure and sale shall be made under the direction of the commissioner of agriculture, or an officer of the department of agriculture. The sale shall be made at the courthouse door in the county in which the seizure is made, after thirty days advertisement in some newspaper published in such county, or if no newspaper is published in such county, then by like advertisement published in the nearest county thereto having a newspaper. The advertisement shall state the name or brand of the goods, the quantity, and why seized and offered for sale.

1909, c. 149, s. 7.

4733. Collection and analysis of sample. The commissioner of agriculture, together with his deputies, agents, and assistants, shall have free access to all places of business, mills, buildings, carriages, cars, vessels, and packages of whatsoever kind used in the manufacture, importation, or sale of any concentrated commercial feeding stuff, and shall have power and authority to open any package containing or supposed to contain any concentrated commercial feeding stuff, and, upon tender and full payment of the selling price of said samples, to take therefrom, in the manner hereinafter prescribed, samples for analysis; and he shall annually cause to be analyzed at least one sample so taken of every concentrated commercial feeding stuff that is found, sold, or offered or exposed for sale in this state under the provisions of this article. Said sample, not less than one pound in weight, shall be taken from not less than ten bags or packages, or if there be less than ten bags or packages, then the sample shall be taken from each bag or package, if it be in bag or package form, or if such feeding stuff be in bulk, then it shall be taken from ten different places of the lot. The sample or samples taken shall be kept a reasonable length of time by the department of agriculture, and on demand a portion of such sample or samples shall be furnished to the manufacturer, importer, or jobber of his feeds for examination by the chemists or other experts of said manufacturer, importer, or jobber. The department of agriculture is hereby authorized to publish from time to time in reports or bulletins the results of the analysis of such sample or samples, together with such additional information as circumstances advise: Provided, however, that if such sample or samples as analyzed differ from the statement prescribed in section 4724 above, then, at least thirty days before publishing the results of such analysis, written notice shall be given of such results to the manufacturer, importer, agent, or jobber of such stock, if the name and address of such manufacturer, jobber, or importer be known: Provided further, that if the analysis

of any such sample does not differ within reasonable limits from the statement prescribed in section 4724 above appearing upon the goods, the manufacturer shall be considered as having complied with the requirements of this article.

Rev., s. 3808; 1909, c. 149, s. 9.

4734. Rules and standards to enforce statute. The board of agriculture is empowered to adopt standards for concentrated commercial feeding stuffs and such rules and regulations as may be necessary for the enforcement of this article, and a violation of such rules and regulations shall be a misdemeanor.

Rev., s. 3808; 1909, c. 149, s. 9.

4735. Sales without tag; misuse of tag; counterfeiting tag. Any manufacturer, importer, jobber, agent, or dealer who shall sell, offer or expose for sale or distribute in this state any concentrated commercial feeding stuff without having attached thereto or furnished therewith such tax stamps, labels, or tags as required by the provisions of this article, or who shall use the required tax stamps, labels, or tags a second time to avoid the payment of the tonnage tax, or any manufacturer, importer, jobber, agent, or dealer who shall counterfeit or use a counterfeit of such tax stamps, labels, or tags, shall be guilty of a violation of the provisions of this article.

1909, c. 149, s. 10.

See *Jennette v. Hay and Grain Co.*, 158-156.

4736. Refusal to comply with the article or hindering its enforcement. Any manufacturer, importer, jobber, agent, or dealer who refuses to comply with the requirements of the provisions of this article, or any manufacturer, importer, jobber, agent, or dealer or person who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent any chemist, inspector, or other authorized agent in the performance of his duty in connection with the provisions of this article, shall be guilty of a violation of such provisions.

Rev., s. 3827; 1903, c. 325, s. 8; 1909, c. 149, s. 11.

4737. Violation of article a misdemeanor. Any manufacturer, importer, jobber, agent, or dealer who shall violate any of the provisions of this article, upon conviction thereof, shall be fined not exceeding fifty dollars for the first offense nor more than two hundred dollars for each subsequent offense, and the proceeds from such fines shall be covered into the state treasury for use of the department of agriculture in executing the provisions of this article.

1909, c. 149, s. 12.

4738. Notice of charges to accused; hearing before commissioner. Whenever the commissioner of agriculture becomes cognizant of any violation of the provisions of this article he shall immediately notify in writing the manufacturer, importer, or jobber and dealer, if same be known. Any party so notified shall be given an opportunity to be heard, under such rules and regulations as may be prescribed by the commissioner and the board of agriculture.

1909, c. 149, s. 13.

4739. Commissioner to certify solicitor and furnish analysis. If it appears that any of the provisions of this article have been violated the commissioner of

agriculture shall certify the facts to the solicitor in the district in which such sample was obtained, and furnish that officer with a copy of the results of the analysis or other examinations of such article, duly authenticated by the analyst or other officer making such examination, under the oath of such officer.

1909, c. 149, s. 13.

4740. Solicitor to prosecute violations. It shall be the duty of every solicitor to whom the commissioner of agriculture shall report any violation of this article to cause proceedings to be commenced and prosecuted without delay for the fines and penalties in such cases prescribed: Provided, that the provisions of this article shall not apply to any concentrated commercial feeding stuffs now in the hands or in the stock of any dealer or manufacturer.

1909, c. 149, s. 14.

4741. Certificate of analyst as evidence. In all prosecutions arising under this article the certificate of the analyst or other officer making the analysis or examination, when duly sworn to by such officer, shall be prima facie evidence of the fact or facts therein certified.

1909, c. 149, s. 13.

ART. 6. STOCK AND POULTRY TONICS

4742. Application and affidavit for registration. Before any condimental, patented, proprietary or trade-marked "stock or poultry tonic," "stock or poultry regulator," "stock or poultry conditioner," or any similar preparation, regardless of the specific name or title under which it is sold, which is represented as containing "tonic," "remedial," or other "medicinal" properties, either is sold, offered or exposed for sale in the state, the manufacturer, importer, dealer, agent or person who causes it to be sold or offered for sale, by sample or otherwise, within this state shall file with the commissioner of agriculture a statement that he desires to offer such "stock or poultry tonic," "stock or poultry regulator," "stock or poultry conditioner," or similar preparation for sale in this state, and also a certificate, the execution of which shall be sworn to before a notary public or other proper official, for registration, stating the name of the manufacturer, the location of the principal office of the manufacturer, and the name, brand, or trade-mark under which the said preparation or preparations will be sold, together with the guaranty that said preparation or preparations are not injurious to the health of domestic animals and that they do not conflict with the drug requirements of article 7 of this chapter, Pure Foods and Drugs, and that the name or trade-mark under which the article is sold shall not mislead or deceive the purchaser in any way; also, that any statement, design, or device on the label or package regarding the substances contained therein shall be true and correct, and any claim made for the feeding, condimental, tonic, or medicinal value shall not be false or misleading in any particular, and file with the commissioner of agriculture a labeled package of each brand of goods, showing claims made for same, which labeling and claims shall not be changed during the fiscal year for which registration is made without the consent of the commissioner of agriculture.

1909, c. 556, s. 1.

4743. Registration fee. For the expense incurred in registering, inspecting, and analyzing "stock or poultry tonics," "stock or poultry regulators," "stock

or poultry conditioners," and similar preparations defined in the last section, a registration fee of twenty dollars for each separate brand shall be paid by the manufacturers or sellers of same to the commissioner of agriculture during the month of July, one thousand nine hundred and nine, and during the month of January in each succeeding year, said fees to be used by the commissioner of agriculture for executing the provisions of this article.

1909, c. 556, s. 2.

4744. Sale of unregistered tonics a misdemeanor. Any person, company, corporation, or agent that shall offer for sale or expose for sale any package or sample or any quantity of any condimental, patented, proprietary, or trade-marked "stock or poultry tonic," "stock or poultry regulator," "stock or poultry conditioner," or any similar preparation, regardless of the title under which it is sold, which has not been registered as required by section 4742, or which may have been registered, but subsequently found by an analysis or examination made by or under the direction of the commissioner of agriculture to violate any of the provisions of this article, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in the sum of fifty dollars for the first offense and in the sum of one hundred dollars for each subsequent offense.

1909, c. 556, s. 3.

4745. Notice of violation charged; hearing before commissioner. Whenever the commissioner of agriculture becomes cognizant of any violation of any of the provisions of this article he shall immediately notify, in writing, the manufacturer, importer, jobber, or dealer, if same be known. Any party so notified shall be given an opportunity to be heard, under such rules and regulations as may be prescribed by the commissioner and the board of agriculture.

1909, c. 556, s. 4.

4746. Commissioner to notify solicitor and furnish analysis. If it appears that any of the provisions of this article have been violated the commissioner of agriculture shall certify the facts to the solicitor in the district in which said sample was obtained, and furnish that officer with a copy of the result of the analysis or other examinations of said article, duly authenticated by the analyst or other officer making such examination under the oath of such officer.

1909, c. 556, s. 4.

4747. Solicitor to prosecute violations. It shall be the duty of every solicitor to whom the commissioner of agriculture shall report any violation of this article to cause proceedings to be commenced and prosecuted without delay for the fines and penalties in such cases prescribed.

1909, c. 556, s. 5.

4748. Certificate of analyst as evidence. In all prosecutions arising under this article the certificate of the analyst or other officer making the analysis or examination, when duly sworn to by such officer, shall be prima facie evidence of the fact or facts therein certified.

1909, c. 556, s. 4.

4749. Purpose of article. This article does not repeal any part of any concentrated commercial feeding-stuff law which may be in effect in this state, but is designed to fully cover all preparations commonly known as condimental, patented, proprietary, or trade-marked "stock or poultry tonics," "stock or poultry regulators," "stock or poultry conditioners," and all similar preparations used for "tonic," "regulative," or "condition" purposes, and to protect the public from deception and fraud in the sale of these specific products.

1909, c. 556, s. 6.

ART. 7. PURE FOODS AND DRUGS

4750. Collection and analysis of samples; publication of results. For the purpose of protecting the people of the state from imposition by the adulteration and misbranding of articles of food, drugs, confectionery, or liquors, the board of agriculture shall cause to be procured from time to time, and under rules and regulations to be prescribed by them in accordance with section 4764, samples of food, drugs, confectionery, or liquors offered for sale in the state, and shall cause the same to be analyzed or examined microscopically or otherwise by the chemists or other experts of the department of agriculture. The board of agriculture is hereby authorized to make such publication of the results of the examination, analyses, and so forth, as they may deem proper.

1907, c. 368, s. 1.

4751. Sale or possession of misbranded or adulterated articles prohibited. No person, firm, or corporation, by himself or agent, shall manufacture, sell, expose for sale, or have in his possession with intent to sell, any article of food, drug, confectionery or liquor which is adulterated or misbranded within the meaning of this article.

1907, c. 368, s. 2.

This applies to sale of articles for food, and hence does not apply to a contract for sale of letters patent for a fumigating apparatus: *Smith v. Alphin*, 150-425.

4752. Violations of this article a misdemeanor; disposal of fine. Any person who shall violate any of the provisions of this article shall be guilty of a misdemeanor, and for such offense shall be fined not exceeding two hundred dollars for the first offense and for each subsequent offense not exceeding three hundred dollars, or be imprisoned not exceeding one year, or both, in the discretion of the court; and such fines, less legal costs and charges, shall be paid into the treasury of the state for the department of agriculture, to be used exclusively in executing the provisions of this article.

1907, c. 368, s. 2.

Persons selling impure food which causes death are liable in a civil action for damages: *Ward v. Sea Food Co.*, 171-33.

4753. Analysis of specimens under rule of department. The chemists or other experts of the department of agriculture shall make, under rules and regulations prescribed by the board of agriculture, examinations of specimens of food, drugs, confectionery, or liquors offered for sale in North Carolina, which may be collected from time to time under their direction in various parts of the state.

1907, c. 368, s. 3.

4754. Notice of violation disclosed; hearing. If it shall appear from any such examinations that any such specimen is adulterated or misbranded within the meaning of this article, that notice thereof shall be given to the manufacturer or party from whom such sample was obtained. Any party so notified shall be given an opportunity to be heard under such rules and regulations as may be prescribed by the commissioner or board of agriculture.

1907, c. 368, s. 3.

4755. Commissioner to certify solicitor and furnish analysis. If it appears that any of the provisions of this article have been violated, the commissioner of agriculture shall certify the fact to the solicitor in the district in which such sample was obtained and furnish that officer with a copy of the results of the analysis or other examinations of such article, duly authenticated by the analyst or other officer making such examination under the oath of such officer.

1907, c. 368, s. 3.

4756. Certificate of analyst as evidence. In all prosecutions arising under this article the certificate of the analyst or other officer making the analysis or examination, when duly sworn to by such officer, shall be prima facie evidence of the fact or facts therein certified.

1907, c. 368, s. 3.

4757. Solicitor to prosecute violations. It shall be the duty of every solicitor to whom the commissioner of agriculture shall report any violation of this article to cause proceedings to be commenced and prosecuted without delay for the fines and penalties in such cases prescribed.

1907, c. 368, s. 4.

4758. "Drug" and "food" defined. That the term "drug" as used in this article shall include all medicines and preparations recognized in the United States Pharmacopœia or National Formulary for internal or external use, and substance or mixture of substances intended to be used for the cure, mitigation, or prevention of disease of either man or other animals. The term "food" as used herein shall include all articles used for food, drink, confectionery, or condiment by man or other animals, whether simple, mixed, or compound.

1907, c. 368, s. 5.

4759. "Adulterated" defined. For the purpose of this article an article shall be deemed to be adulterated:

1. *Adulterated drugs.* In case of drugs:

(1) If, when a drug is sold under or by a name recognized in the United States Pharmacopœia or National Formulary, it differs from the standard of strength, quality, or purity, as determined by the test laid down in the United States Pharmacopœia or National Formulary official at the time of investigation: Provided, that no drug defined in the United States Pharmacopœia or National Formulary shall be deemed to be adulterated under this provision if the standard of strength, quality, or purity be plainly stated upon the bottle, box, or other container thereof, although the standard may differ from that determined by

the test laid down in the United States Pharmacopœia or National Formulary.

(2) If its strength or purity fall below the professed standard or quality under which it is sold.

2. *Adulterated confectionery.* In case of confectionery:

(1) If it contains terra alba, barytes, talc, chrome yellow, or other mineral substance or poisonous color or flavor, or other ingredient deleterious or detrimental to health, or any vinous, malt, or spirituous liquor or compound or narcotic drug.

3. *Adulterated food.* In case of food:

(1) If any substance has been mixed or packed with it, so as to reduce or lower or injuriously affect its quality or strength.

(2) If any substance has been substituted wholly or in part for the article.

(3) If any valuable constituent of the article has been wholly or in part abstracted.

(4) If it be mixed, colored, bleached, powdered, coated, or stained in a manner whereby damage or inferiority is concealed.

(5) If it contains any added poisonous or other added deleterious ingredient which may render such article injurious to health. If it contains any of the following substances, which are hereby declared deleterious and dangerous to health when added to human food, to wit: Colors which contain antimony, arsenic, barium, lead, cadmium, chromium, copper, mercury, uranium, or zinc; or the following colors: gamboge, corallin, picric acid, aniline, or any of the coal-tar dyes; saccharine, dulcin, glucin, or any other artificially or synthetically prepared substitute for sugar; paraffin, formaldehyde, beta-naphthol, abradol, benzoic acid or benzoates, salicylic acid or salicylates, boric acid or borates, sulphurous acid or sulphites, hydrofluoric acid or any fluorine compounds, sulphuric acid or potassium sulphate or wood alcohol: Provided, that catsups and condimental sauces may, when the fact is plainly and legibly stated in the English language on the wrapper and label of the package in which it is retailed, contain not to exceed two-tenths of one per cent of benzoic acid or its equivalent in sodium benzoate. Fermented liquors may contain not to exceed two-tenths of one per cent of combined sulphuric acid and not to exceed eight-thousandths of one per cent of sulphurous acid.

(6) If it consists in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that had died otherwise than by slaughter. In addition to the ways already provided, sausage shall be deemed to be adulterated if it is composed in any part of liver, lungs, kidneys, or other viscera of animals: Provided, that the use of animal intestines as sausage casings shall not be deemed to be an adulteration.

(7) If it differs in strength, quality, or purity from the standards of purity of food products that have been or may be from time to time adopted by the board of agriculture.

(8) By consent of the board, the commissioner of agriculture may, when he deems it advisable and to the best interest of the public, suspend the action of

any provision of subdivision five of subsection three of this section, relating to the use of chemical preservatives and coal-tar dyes in food, when such provision is not in harmony with the provisions of the National Food Law or rulings thereunder.

1907, c. 368, s. 6; 1909, c. 900, s. 2; 1913, c. 136.

Section referred to in *Smith v. Alphin*, 150-425.

4760. "Misbranded" defined. The term "misbranded" as used herein shall apply to all drugs, or articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design, or device regarding such article, or the ingredients or substance contained therein, which shall be false or misleading in any particular, and to any food or drug product which is falsely branded as to the state, territory, or country in which it is manufactured or produced.

That for the purpose of this article an article shall also be deemed to be misbranded:

1. *Misbranded drugs.* In the case of drugs:

(1) If it be an imitation of, or offered for sale under the name of, another article.

(2) If the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in such package, or if the package fails to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, or acetanilide, or any derivative or preparation of any such substances contained therein: Provided, that this shall not apply to prescriptions of regularly licensed physicians, dentists, and veterinary surgeons, United States Pharmacopœia and National Formulary preparations.

(3) If its package or label shall bear or contain any statement, design, or device regarding the curative or therapeutic effect of such article or any of the ingredients or substances contained therein which is false or fraudulent.

1907, c. 368, s. 7.

2. *Misbranded food.* In the case of food:

(1) If it be an imitation of, or offered for sale under the distinctive name of, another article.

(2) If it be labeled or branded so as to deceive or mislead the purchaser, or purport to be a foreign product when not so, or if the contents of the package as originally put up shall have been removed in whole or in part, and other contents shall have been placed in such package, or if it fail to bear a statement on the label of the quantity or proportion of any morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, or acetanilide, or any derivative or preparation of any such substances contained therein. That all cans, jars, or other packages containing canned meats intended for food shall have printed on the label thereof the correct date on which said food product was canned or put into said package, as provided in the National Pure Food Law.

(3) If in package form, the quantity of the contents be not plainly and conspicuously marked on the outside of the package in terms of weight, measure, or numerical count so as to comply with the regulations on labeling prescribed by the board of agriculture, provided for by section 4764 in this article. The board of agriculture is hereby authorized to establish rules and regulations permitting reasonable variations when in their judgment exactness is impractical: Provided, that the provisions of this paragraph shall not apply to articles in packages or containers when the retail price of such article is six cents or less: and Provided further, that it shall not apply to products on hand at the time of the passage of this act until after January first, one thousand nine hundred and sixteen.

(4) If the package containing it or its label shall bear any statement, design, or device regarding the ingredients or the substances contained therein, which statement, design, or device shall be false or misleading in any particular.

1915, c. 154, s. 1; 1917, c. 19, s. 1.

4761. Certain compounds, etc., not deemed adulterated or misbranded. An article of food which does not contain any added poisonous or deleterious ingredients shall not be deemed to be adulterated or misbranded in the following cases:

1. In the case of mixtures or compounds which may be now or from time to time hereafter known as articles of food under their own distinctive names, and not an imitation of, or offered for sale under the distinctive name of, another article, if the name be accompanied on the same label or brand with a statement of the place and where said article has been manufactured or produced.

2. In the case of articles labeled, branded, or tagged so as to plainly indicate that they are compounds, imitations or blends, and the word "compound," "imitation," or "blend," as the case may be, is plainly stated on the package in which it is offered for sale: Provided, the labeling is according to the rules prescribed by the board of agriculture: Provided, that the term "blend" as used herein shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring and flavoring only: and Provided further, that nothing in this article shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods which contain no unwholesome added ingredient to disclose their trade formulas, except in so far as the provisions of this article may require to secure freedom from adulteration or misbranding.

1907, c. 368, s. 7.

4762. Sale of unsanitary meat; prosecution and fine; meat destroyed. It shall be unlawful for any person or persons, firm or corporation, to sell, or to have in his or their possession to sell for human food, the carcass or parts of carcass of any animal which has been slaughtered, prepared, or kept under unsanitary conditions; and unsanitary conditions shall legally exist wherever and whenever any one or more of the following conditions appear or are found, to wit: If the slaughter-house is dilapidated and in a state of decay; if the drainage of the slaughter-house or slaughter-house yard is not efficient; if maggots or filthy pools or hog-wallows exist in the slaughter-house yard or under the slaughter-house;

if the water supply is not pure and unpolluted; if hogs are kept in the slaughter-house yard, or fed therein on animal offal, or if the odors of putrefaction plainly exist therein, or if kept in unclean, bad-smelling refrigerators, or if kept in unclean or bad-smelling storage-rooms.

All peace and health officers shall have the power and are commanded to seize any animal carcass or parts of carcasses which are intended for sale or offered for sale for human food, which have been slaughtered and prepared, handled or kept under unsanitary conditions as herein defined, and shall deliver the same forthwith to and before the nearest police judge or justice of the peace, together with all information obtained; and said police judge or said justice of the peace shall, upon sworn complaint being filed, issue warrants of arrest for all persons who have violated the provisions of this section, and proceed to try the case. Any person, persons, firm, or corporation found guilty of violating the provisions of this section shall be fined not less than ten nor more than one hundred dollars, and the meat in question shall be destroyed.

1907, c. 368, s. 8.

4763. Dealer released by guaranty of wholesaler. That no dealer shall be prosecuted under the provisions of this article when he can establish a guaranty signed by the wholesaler, jobber, manufacturer, or other party, residing in North Carolina, from whom he purchases such articles, to the effect that the same is not adulterated or misbranded within the meaning of this article, designating it. Said guaranty, to afford protection, shall contain the name and address of the party or parties making the sale of such articles to such dealer, and in such cases said party or parties shall be amenable to the prosecutions, fines, and other penalties which would attach, in due course, to the dealer under the provisions of this article: Provided, that the above guaranty shall not afford protection to any dealer after the first offense in connection with a product from a particular wholesaler, jobber, or manufacturer.

1907, c. 368, s. 9.

4764. Standards and rules to enforce article; drug inspector. The board of agriculture shall, from time to time, fix and publish standards or limits of variability permissible in any article of food, drugs, confectionery, or liquors, and the North Carolina board of pharmacy shall, from time to time, fix and publish standards or limits of variability permissible in any article of drugs, and these standards, when so published, shall be the standards before all courts: Provided, that these standards shall not apply to United States Pharmacopœia and National Formulary preparations. The board of agriculture shall have authority to make uniform rules and regulations for carrying out the provisions of this article, and in the appointment of a drug inspector under the provisions of this article they shall confer with the North Carolina board of pharmacy.

1907, c. 368, s. 10.

Section cited in *Smith v. Alphin*, 150-425.

4765. Seller to furnish samples on payment. Every person who offers for sale or delivers to a purchaser any food, drugs, confectionery, or liquors, shall furnish within business hours and upon tender and full payment of the selling price, a sample of such food, drugs, confectionery, or liquors to any person duly author-

ized by the board of agriculture to secure the same, and who shall apply to such manufacturer or vender or person delivering to a purchaser, food, drugs, confectionery, or liquors, for such sample for such use in sufficient quantity for the analysis of such article or articles in his possession.

1907, c. 368, s. 11.

4766. Refusing samples or obstructing article a misdemeanor. Any manufacturer or dealer who refuses to comply, upon demand, with the requirements of the preceding section, or any manufacturer, dealer, or person who shall impede, obstruct, hinder, or otherwise prevent, or attempt to prevent, any chemist, inspector, or other person in the performance of his duty in connection with this article, shall be guilty of a misdemeanor, and upon conviction be fined not less than ten dollars nor more than one hundred dollars, or be imprisoned, in the discretion of the court; and said fines, less the legal costs, shall be paid into the treasury of the state for the benefit of the department of agriculture, to be used exclusively in executing the provisions of this article.

1907, c. 368, s. 12.

4767. Person includes corporation; liability for acts of agents. The word "person" as used in this article shall include corporations, companies, societies, and associations. When construing and enforcing the provisions of this article, the act, omission, or failure of any officer, agent, or other person acting for or employed by any corporation, company, society, or association within the scope of his employment or office, shall in every case be also deemed to be the act, omission, or failure of such corporation, company, society, or association, as well as that of the person.

1907, c. 368, s. 13.

4768. Sale contrary to article misdemeanor; forfeiture; disposal of proceeds. Any person, firm, or corporation who shall manufacture, sell, or offer for sale any article of food, drug, or liquor that is adulterated or misbranded within the meaning of this article, or who shall violate any of the rules or regulations adopted by the board of agriculture for the purpose of carrying out the provisions of this article, shall be guilty of a misdemeanor, and in addition to being subject to the penalties already provided in this article, the article of food, drug, or liquor shall be subject to seizure, condemnation, and sale by the commissioner of agriculture, as is provided for the seizure, condemnation, and sale of commercial fertilizers; and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the treasury for the use of the department of agriculture in executing the provisions of this article; but no article or articles shall be sold in any jurisdiction contrary to the provisions of this article or the laws of that jurisdiction: Provided, that the commissioner of agriculture shall have authority for the first offense to allow the shipment of such article or articles without the borders of the state.

Rev., s. 3821; 1907, c. 368, s. 14; 1901, c. 479, s. 4, subsec. 9.

For civil liability, see *Smith v. Alphin*, 150-425; *Ward v. Sea Food Co.*, 171-33.

ART. 8. BOTTLING PLANTS FOR SOFT DRINKS

4769. Specifications of places of manufacture. Every building or room used for the manufacture, bottling or preparation for sale of any soft drink shall be

properly lighted, drained, and ventilated, and shall have floors of some material which can be flushed and washed clean with water. All manufacturing or bottling of soft drinks shall be conducted with due regard for the purity and wholesomeness of the products therein produced.

1919, c. 221, s. 1.

4770. Soft drink defined. The term "soft drink" as used herein shall include all soda waters, root beers, and similar beverages, carbonated or otherwise, or ingredients used in the preparation of same.

1919, c. 221, s. 2.

4771. Bottling plant kept clean; containers sterilized. The floors, walls, ceilings, furniture, receptacles, implements, and machinery of every establishment where soft drinks are manufactured, bottled, stored, sold, or distributed shall at all times be kept in a clean, sanitary condition; all vessels, receptacles, utensils, tables, shelves, and machinery used in moving, handling, mixing, or processing must be thoroughly cleaned daily; all bottles, jugs, and other containers used must be sterilized with boiling water or live steam before being used, and all second-hand bottles or bottles that have been previously used must be soaked in caustic soda or alkali solution as prescribed by the rules and regulations adopted by the board of agriculture.

1919, c. 221, s. 3.

4772. Protection from contamination. Soft drinks in the process of manufacture, preparation, bottling, storing, or distribution must be protected from flies and dirt, and, as far as may be necessary, from all other foreign or injurious contamination.

1919, c. 221, s. 4.

4773. Refuse removed daily. All refuse, dirt, and the waste products subject to decomposition and decay incident to the manufacture, preparation, storing, selling, or distribution of soft drinks must be removed from the plant daily.

1919, c. 221, s. 5.

4774. Screened against flies. The doors, windows, and other openings of every building or room used for the preparation or bottling of soft drinks during fly season shall be fitted with self-closing screen doors and wire window screens of not coarser than fourteen-mesh wire gauze.

1919, c. 221, s. 6.

4775. Washroom and toilet. Every bottling establishment shall be provided with washroom, and, if a toilet is attached, it must be of sanitary construction, and such toilet shall be separate and apart from any room used for the manufacture or bottling of soft drinks.

1919, c. 221, s. 7.

4776. Use of deleterious substances prohibited. The use of soap bark or any other substance deleterious to health in soft drinks is prohibited, and the container must bear the name of the material and the name and address of the manufacturer or jobber.

1919, c. 221, s. 8.

4777. Information on container. The information required on the container of soft drinks may appear either on a paper label pasted on the container or on the crown cap of same.

1919, c. 221, s. 9.

4778. Enforcement by board of agriculture; obstruction a misdemeanor. It shall be the duty of the board of agriculture to enforce the provisions of this article, and the said board shall adopt and publish such regulations under this article as will insure the uniform and efficient enforcement of same. The food inspectors of the department of agriculture shall have authority, during business hours, to enter, for the purpose of inspection, all buildings or rooms used for the manufacture, bottling or handling of soft drinks, and to examine the condition of same, including products before and after manufacture, machinery and all implements used; and any person who shall hinder or prevent any inspector in the performance of his duty in connection with this article shall be guilty of a violation thereof.

1919, c. 221, s. 10.

4779. Violation of article a misdemeanor. Any person who shall violate any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not to exceed twenty-five dollars for the first offense, and for each subsequent offense in the discretion of the court.

1919, c. 221, s. 11.

4780. Bottler's inspection fee. For the purpose of defraying expenses incurred in the enforcement of the provisions of this article, the owner, proprietor, or operator of each bottling plant or place where soft drinks are made or bottled operated in this state shall pay to the commissioner of agriculture an inspection fee of ten dollars during the month of June of each year or before any such bottling plant shall be operated thereafter.

1919, c. 221, s. 12.

ART. 9. MARKETING AND BRANDING FARM PRODUCTS

4781. Establishment of standard packages, etc., authorized. The purpose of this article is to give authority to investigate marketing conditions and to establish and maintain standard grades and packages and state brands for farm and horticultural crops.

1919, c. 325, s. 1.

4782. Power to employ agents and assistants. The board of agriculture is charged with the execution of the provisions of this article, and has authority to employ such agents and assistants as may be necessary, fix their compensation and define their duties, and may require bonds in such amount as they may deem advisable, conditioned upon the faithful performance of duties by any employee or agent.

1919, c. 325, s. 2.

4783. Board of agriculture to investigate marketing of farm products. It shall be the duty of the board of agriculture to investigate the subject of mar-

keting farm products, to diffuse useful information relating thereto, and to furnish advice and assistance to the public in order to promote efficient and economical methods of marketing farm products, and authority is hereby given to gather and diffuse timely information concerning the supply, demand, prevailing prices, and commercial movement of farm products, including quantities in common and cold storage, and may interchange such information with the United States department of agriculture.

1919, c. 325, s. 3.

4784. Promulgation of standards for receptacles, etc. After investigation, and from time to time as may be practical and advisable, the board shall have authority to establish and promulgate standards of opened and closed receptacles for, and standards for the grade and other classification of farm products, by which their quantity, quality, and value may be determined, and prescribe and promulgate rules and regulations governing the marks, brands, and labels which may be required for receptacles for farm products, for the purpose of showing the name and address of the producer or packer; the quantity, nature and quality of the product, or any of them, and for the purpose of preventing deception in reference thereto, and for the purpose of establishing a state brand for any farm product produced in North Carolina: Provided, that any standard for any farm product or receptacle therefor, or any requirement for marking receptacles for farm products, now or hereafter established under authority of the congress of the United States, shall forthwith, as far as applicable, be established or prescribed and promulgated as the official standard or requirement in this state: Provided, that no standard established or requirement for marking prescribed under this article shall become effective until the expiration of thirty days after it shall have been promulgated.

1919, c. 325, s. 4.

4785. Sale and receptacles of standardized products must conform to requirements. Whenever any standard for the grade or other classification of any farm product becomes effective under this article no person thereafter shall pack for sale, offer to sell, or sell within this state any such farm product to which such standard is applicable, unless it conforms to the standard, subject to such reasonable variations therefrom as may be allowed in the rules and regulations made under this article: Provided, that any farm product may be packed for sale, offered for sale, or sold, without conforming to the standard for grade or other classification applicable thereto, if it is especially described as not graded or plainly marked "Not graded."

Whenever any standard for an open or closed receptacle for a farm product shall be made effective under this article no person shall pack for sale in and deliver in a receptacle, or sell in and deliver in a receptacle, any such farm product to which such standard is applicable, unless the receptacle conforms to the standard, subject to such variations therefrom as may be allowed in the rules and regulations made under this article, or unless the receptacle be of a capacity twenty-five per cent less than the capacity of the minimum standard receptacle for the product: Provided, that any receptacle for such farm product of a capacity within twenty-five per cent of, or larger than, the minimum

standard receptacle for the product may be used if it be specifically described as not a standard size, or be conspicuously marked with the phrase, "Not standard size," in addition to any other marking which may be prescribed for such receptacles under authority given by this article.

Whenever any requirement for marking a receptacle for a farm product shall have been made effective under this article no person shall sell and deliver in this state any such farm product in a receptacle to which such requirement is applicable unless the receptacle be marked according to such requirements.

1919, c. 325, s. 5.

4786. Inspectors or graders authorized; revocation of license. The board is authorized to employ, license, or designate persons to inspect and classify farm products and to certify as to the grade or other classification thereof, in accordance with the standards made effective under this article, and shall fix, assess and collect, or cause to be collected, fees for such services. Whenever, after opportunity for a hearing is afforded to any person employed, licensed, or designated under this section, it is determined that such person has failed to classify farm products correctly in accordance with the standards established therefor under this article, or has violated any provision of this article, or of the rules and regulations made hereunder, the board may suspend or revoke the employment, license, or designation of such person. Pending investigation the person in charge of this work may suspend or revoke any such appointment, license, or designation temporarily without hearing.

1919, c. 325, s. 6.

4787. Appeal from classification. The owner or person in possession of any farm product classified in accordance with the provisions of this article may appeal from such classification under such rules and regulations as may be prescribed.

1919, c. 325, s. 7.

4788. Certificate of grade prima facie evidence. A certificate of the grade or other classification of any farm product issued under this article shall be accepted in any court of this state as prima facie evidence of the true grade or other classification of such farm product at the time of its classification.

1919, c. 325, s. 8.

4789. Unwholesome products not classified; health officer notified. Any person employed, licensed, or designated shall neither classify nor certify as to the grade or other classification of any farm product which, in his judgment, is unwholesome or unfit for food of man or other animal. If, in the performance of his official duties, he discovers any farm product which is unwholesome or unfit for food of man or for other animal for which it is intended, he shall promptly report the fact to a health officer of the state or of any county or municipality thereof.

1919, c. 325, s. 9.

4790. Inspection and sampling of farm products authorized. Agents and employees are authorized from time to time to ascertain the amount of any farm

products in this state, to inspect the same in the possession of any person engaged in the business of marketing them in this state, and to take samples of such products. In carrying out these purposes agents and employees are authorized to enter on any business day, during the usual hours of business, any storehouse, warehouse, cold storage plant, packing-house, stock-yard, railroad yard, railroad car, or any other building or place where farm products are kept or stored by any person engaged in the business of marketing farm products.

1919, c. 325, ss. 10, 11.

4791. Rules and regulations; how prescribed. The board of agriculture is authorized to make and promulgate such rules and regulations as may be necessary to carry out the provisions of this article. Such rules and regulations shall be made to conform as nearly as practicable to the rules and regulations of the secretary of agriculture of the United States, prescribed under any act of congress of the United States relating to the marketing of farm products.

1919, c. 325, s. 12.

4792. Violation of article or regulations a misdemeanor. Any person who violates any provision of this article, or of the rules and regulations made under the article for carrying out its provisions, or fails or refuses to comply with any requirement thereof, or who wilfully interferes with agents or employees in the execution, or on account of the execution, of his or their duties, shall be guilty of a misdemeanor. Any person convicted of a misdemeanor under this article shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than thirty days, or by both in the discretion of the court.

1919, c. 325, ss. 13, 14.

4793. Unconstitutionality of part of article not to affect remainder. If any part of this article be declared unconstitutional by any court of competent jurisdiction the validity of the remaining parts of the article shall not thereby be affected or impaired. This article shall not be construed so as to conflict with any statute of the United States regulating commerce among the several states, or in any place under the exclusive jurisdiction of the United States.

1919, c. 325, s. 15.

ART. 10. STANDARD WEIGHT OF FLOUR AND MEAL

4794. Standard-weight packages for corn products; violation a misdemeanor. It shall be unlawful for any person or persons to pack for sale, or offer for sale in this state, any corn meal, grits, hominy, or corn flour, except in bags or packages containing by standard net avoirdupois weight one pound, two pounds, three pounds, four pounds, five pounds, ten pounds, twenty-five pounds, fifty pounds, and one hundred pounds, or multiples of one hundred pounds, respectively. Each bag or package shall have plainly and legibly printed or marked thereon the net weight of contents thereof, in pounds, avoirdupois, and such weights shall be a true and correct statement thereof; Provided, that the provisions of this section shall not apply to the retailing of meal direct to customers from bulk stock, when purchased and delivered by actual weight or meas-

ure, or to exchange of corn for meal by mills grinding for toll. Any violation of this section shall be a misdemeanor and, upon conviction, the offender shall be fined not less than twenty-five dollars nor more than five hundred dollars.

1919, c. 74, ss. 2, 3.

4795. Flour to be sold in standard-weight and stamped packages. It shall be unlawful for any person to pack for sale, sell, or offer for sale in this state, flour, except in packages containing by standard weight twelve pounds, twenty-four pounds, forty-eight pounds, ninety-eight pounds, or one hundred and ninety-six pounds of flour, with the weight plainly stated on the outside of the package. This section is not applicable to the retailing of flour direct to customers, nor to the packing or selling of flour in packages less than one-eighth of a bushel.

1909, c. 555, s. 3; 1911, c. 145; 1915, c. 10.

4796. Inspections to enforce article. The board of agriculture shall cause to be made from time to time, under rules and regulations to be prescribed by them in accordance with the provisions of this article, such inspections or examinations as may be necessary to determine whether the provisions of this article have been violated.

1909, c. 555, s. 4.

4797. Commissioner to certify solicitor of violation and furnish facts. If it shall appear from such inspection or examination that any of the provisions of this article have been violated, the commissioner of agriculture shall certify the fact to the solicitor in the district in which the violation was committed, and furnish that officer with the facts in the case, duly authenticated by the inspector, under oath, who made the examination.

1909, c. 555, s. 4.

4798. Violation of article a misdemeanor. Any person or persons violating any provision of this article shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by fine or imprisonment in the discretion of the court, except as otherwise provided in section 4794.

1909, c. 555, s. 5.

4799. Forfeiture for unauthorized sale; release from forfeiture. Meal or flour offered for sale in violation of this article shall be subject to seizure, condemnation, and sale by the commissioner of agriculture, as is provided for the seizure, condemnation, and sale of commercial fertilizers; and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the treasury for the use of the department of agriculture in executing the provisions of this article: Provided, that the commissioner of agriculture may in his discretion order the release of the meal or flour seized when the owner of same shall offer to pack it in accordance with the provisions of sections 4794 and 4795 in this article, and it shall appear to the satisfaction of the commissioner that said owner did not intend to violate the provisions of the law.

1909, c. 555, s. 5.

4800. Rules to enforce statute. The board of agriculture shall have authority to make uniform rules and regulations for carrying out the provisions of this article.

1909, c. 555, s. 6.

ART. 11. ARTIFICIALLY BLEACHED FLOUR

4801. Collection and analysis of samples; publication of results. For the purpose of regulating the labeling and sale of artificially bleached flour, the board of agriculture shall cause inspection to be made from time to time, and samples of flour offered for sale in the state obtained, and shall cause same to be analyzed or examined by the state food chemist or other experts of the department of agriculture for the purpose of determining if same has been artificially bleached or sold in violation of this article. The board of agriculture is hereby authorized to make such publication of the results of the examination, analysis, and so forth as they may deem proper.

1917, c. 249, s. 1.

4802. Entry to secure samples. The food inspectors of the department of agriculture shall have authority, during business hours, to enter all stores, warehouses, and other places where food products are stored or offered for sale for the purpose of inspection and obtaining samples of same.

1915, c. 278, s. 2.

4803. Commissioner to certify solicitor of violation and furnish facts. If it shall appear from such inspection or examination or both that any of the provisions of this article have been violated, the commissioner of agriculture shall certify the facts to the solicitor in the district in which the violation was committed, and furnish that officer with the facts in the case, duly authenticated by the expert, under oath, who made the examination.

1915, c. 278, s. 3.

4804. Label for artificially bleached flour. Flour artificially bleached with nitrogen peroxide or chlorine or any other agent, when offered for sale in North Carolina, shall have plainly marked or printed in a conspicuous place on the sack, barrel, or other package, in letters not smaller than five-eighths of an inch in size, the legend: "Artificially Bleached."

1915, c. 278, s. 4.

4805. Statement required to be filed before sale. Before any artificially bleached flour shall be offered for sale in this state the manufacturer, dealer, agent, or person who causes it to be sold or offered for sale, by sample or otherwise, within this state shall file with the commissioner of agriculture a statement that it is desired to offer such bleached flour for sale in North Carolina, and the name of the manufacturer or jobber and the brand name of the flour if it has such.

1915, c. 278, s. 5.

4806. Inspection fee for registering brands. For the purpose of defraying expenses incurred in the enforcing of the provisions of this article, for each and every separate brand of artificially bleached flour registered and before being

offered for sale in the state, the manufacturer, dealer, or agent registering same shall pay to the commissioner of agriculture an inspection fee of fifteen dollars during the month of July, one thousand nine hundred and fifteen, and during the month of January in each succeeding year, or before such flour is offered for sale in the state, said fees to be used by the board and commissioner of agriculture for executing the provisions of this article.

1917, c. 249, s. 2.

4807. Violation of article a misdemeanor. Any person or persons, firm or corporation, by himself or agent, who shall sell, offer for sale, or have in his possession with intent to sell any artificially bleached flour not labeled or branded as required in section 4804, or who shall violate any of the provisions of the article, shall be guilty of a misdemeanor, and for such offense, upon conviction of same, shall be fined not to exceed fifty dollars for the first offense and for each subsequent offense not to exceed one hundred dollars, or be imprisoned not to exceed six months, or both, in the discretion of the court.

1915, c. 278, s. 7.

4808. Forfeiture for unauthorized sale; release from forfeiture. The flour offered for sale in violation of this article shall be subject to seizure, condemnation, and sale by the commissioner of agriculture, as is provided for the seizure, condemnation, and sale of commercial fertilizers; and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into treasury for use in executing the provisions of this article: Provided, that the commissioner of agriculture may, in his discretion, for the first offense, order the release of the flour seized, upon payment by the owner of the flour of the expenses incurred by the department in the seizure of the same, and upon compliance with the requirements of this article, when it shall appear to the commissioner that said owner did not intend to violate the law.

1915, c. 278, s. 7.

4809. Seller to furnish samples on payment. Every person who offers for sale or delivers flour to a purchaser shall, within business hours, and upon tender or payment of the selling price, furnish a sample of flour as demanded, to any person duly authorized by the board of commissioners to secure same, and who shall apply for such sample.

1915, c. 278, s. 8.

4810. Refusing samples or obstructing article a misdemeanor. Any manufacturer or dealer who refuses to comply, upon demand, with the requirements of the last section, or any person who shall wilfully impede, hinder, or otherwise prevent or attempt to prevent, any chemist or inspector in the performance of his duty in connection with this article, shall be guilty of a misdemeanor, and upon conviction be fined not less than ten dollars and not more than one hundred dollars, or imprisoned, in the discretion of the court.

1915, c. 278, s. 8.

ART. 12. SEED INSPECTION

4811. "Agricultural seed" and "vegetable seed" defined. The term "agricultural seed" used in this article shall include the seeds of all domesticated

grasses, cereals, clovers, vetches, alfalfas, peas (except garden peas), beans (except garden beans), and seeds of all other crops that are or may be successfully grown in North Carolina on field scale. The term "vegetable seed" shall include the seeds of those crops that are generally grown in North Carolina on garden scale and generally known and sold under the name of "vegetable seeds."

1917, c. 241, s. 1.

4812. Packages to be labeled with specified particulars. Every parcel, package, or lot of agricultural seeds, as defined in the last preceding section, offered or exposed for sale in this state, for use within the state, shall have affixed thereto, in a conspicuous place on the outside thereof, distinctly printed in the English language in legible type, a statement certifying:

1. The commonly accepted name of such agricultural seeds.
2. The approximate per cent by weight of purity, meaning the freedom of such agricultural seeds from inert matter and from other seeds distinguishable by their appearance.
3. The approximate per cent by weight of weed seeds and other agricultural seeds designated in sections 4814 and 4815 of this article.
4. The approximate per cent of viability, together with the month and year said seed were tested for viability.
5. Full name and address of the seedsman, importer, dealer, agent, or other person or persons, firms or corporations selling, offering or exposing for sale or for distribution such agricultural seeds in the state for seeding purposes.

1917, c. 241, s. 2.

4813. "Inert matter" defined. The term "inert matter" as used in this article shall be understood to include sand, dirt, chaff, and other foreign substances, and broken seed incapable of germinating.

1917, c. 241, s. 3.

4814. "Other agricultural seeds" defined. The term "other agricultural seeds" as used in this article shall be understood to include all agricultural seeds not of the kind or species named on the package.

1917, c. 241, s. 4.

4815. "Weed seeds" defined. The term "weed seeds" as used in this article shall be understood to include seeds of the plants commonly known as wild onion or wild garlic, wild mustard, Canada thistle, clover dodder and other dodders, corn cockle, cheat or chess, wild carrot, curled dock, sheep sorrel, black mustard, common plantain, bracted plantain, buckhorn, chickweed, crab-grass, and seeds of all other plants which commonly occur in a wild state, noxious or otherwise.

1917, c. 241, s. 5.

4816. Mixed seeds to be so labeled. Mixtures, when in bulk, packages, or other containers, offered or exposed for sale within the state, for seeding purposes, containing two or more kinds of agricultural seed, shall have affixed thereto in a conspicuous place on the exterior of the container of such mixture a plainly written or printed tag or label in the English language, stating:

1. That such seed is a mixture.
2. The name, kind of each seed entering into the mixture.
3. The approximate percentage by weight of inert matter.
4. The approximate percentage by weight of weed seeds and other agricultural seeds, as defined in sections 4814 and 4815 of this article.
5. The full name and address of the seedsman, importer, dealer, or agent, or other person or persons, firms or corporations, selling or offering or exposing for sale or distribution such mixtures in this state for seeding purposes.

1917, c. 241, s. 6.

4817. How locally grown seeds excepted. Agricultural seeds or mixtures of same shall be exempt from the provisions of this article when plainly marked on the outside of the container, "Not cleaned seed" or "Not tested seed," and when they are grown in the locality in which they are offered for sale.

1917, c. 241, s. 7.

4818. Label inconsistent with law prohibited. No statements regarding the quality of such agricultural seeds or mixtures, if inconsistent with the requirements of this article, shall be written or printed on the tag or label, or placed inside or affixed to any container or bulk of agricultural seed or mixture sold, offered or exposed for sale or distribution within the state for seeding purposes.

1917, c. 241, s. 8.

4819. Reasonable viability; test. No standard of purity or germination shall be maintained for vegetable seeds, but said seeds must have a reasonable percentage of viability, and each packet or package must show on the tag or label the exact nature of its contents. The power to determine what is a "reasonable percentage of viability" is hereby vested in the commissioner of agriculture.

1917, c. 241, s. 9.

4820. Sale contrary to article; obstructing article. It shall be unlawful for any person, firm, or corporation to sell, offer or expose for sale or distribution within the state, any agricultural or vegetable seeds or mixtures of agricultural seeds as defined in this article for seeding purposes, without complying with the requirements of this article, or to falsely mark or label any agricultural or vegetable seeds, or to interfere in any way with the inspectors or assistants in the discharge of the duties herein named.

1917, c. 241, s. 10.

4821. Enforcement of article; rules; laboratory; inspectors. The duty of enforcing this article and carrying out its provisions and requirements shall be vested in the commissioner of agriculture. The said commissioner shall be and is hereby empowered to adopt such regulations and rules as may be deemed necessary in order to secure the efficient enforcement of this article: Provided, that said commissioner shall maintain a laboratory with the necessary equipment, and appoint such analysts, inspectors, and assistants as may be necessary for the proper enforcement and carrying out of the provisions of this article.

1917, c. 241, s. 11.

4822. Withdrawal of seeds lacking viability. Seed not having a reasonable viability or that are extremely impure, notwithstanding they may be properly labeled, shall be withdrawn from sale when, in the opinion of the commissioner, such withdrawal is in the interest of normal crop production.

1917, c. 241, s. 12.

4823. Procurement and analysis of samples. It shall be the duty of the said commissioner, either by himself or his duly authorized agents, to inspect, examine, and make analysis of and test any agricultural or vegetable seeds sold, offered or exposed for sale or distribution within the state for seeding purposes, at such time and place and to such extent as he may determine. The commissioner and his agents shall have free access, at all reasonable hours, upon and into any premises or structures to make examination of any agricultural seeds, whether such seeds are upon the premises of the owner or consignee of such seeds or on the premises or in the possession of any warehouse, elevator, railroad or steamship company; and he is hereby given authority in person, or by his analysts, inspectors or assistants, upon notice to the dealer, his agent, or the representative of any warehouse, elevator, railroad, or steamship company, if present, to take for analysis a composite sample of such agricultural or vegetable seeds, from a parcel, package, or lot or other container, or numbers of parcels, packages, lots, or other containers. Said sample shall be thoroughly mixed and divided into two samples of at least two ounces each and securely sealed. One of said samples shall be left with or on the premises of the vender, or party in interest, and the other retained by said commissioner, or analyst or agent, for analysis.

1917, c. 241, s. 13.

4824. Publication of results. It shall be the duty of the commissioner of agriculture to publish, or cause to be published, at the end of the year the results of the examinations and tests made of any samples of agricultural or vegetable seeds, or mixtures of agricultural seeds, received from private individuals, or withdrawn as provided for in section 4823, together with any other information he may deem advisable: Provided, that the rules for analyses shall conform to the best known methods of examining and testing agricultural and vegetable seeds.

1917, c. 241, s. 14.

4825. Violation of article a misdemeanor. Every violation of the provisions of this article or of any of the rules or regulations that may be adopted by the commissioner of agriculture for the purpose of securing the efficient enforcement of this article shall be deemed a misdemeanor and punishable by fine not to exceed one hundred dollars.

Rev., s. 3821; 1901, c. 479, s. 4, subsec. 9; 1917, c. 241, s. 15.

4826. Commissioner to prosecute or to report to attorney-general. If the commissioner shall find, upon examination, analysis, or test, that any person, firm, or corporation has violated any of the provisions of this article he or his duly authorized agent or agents may institute proceedings in a court of competent jurisdiction to have such person, firm, or corporation convicted thereof; or the commis-

sioner, in his discretion, may report the result of such examination to the attorney-general, together with sworn statement of the analyst, duly acknowledged, and such other evidence of said violation as he shall deem necessary.

1917, c. 241, s. 15.

4827. Certificate of analyst as evidence. Said sworn statement shall be admitted as evidence in any court of this state in any proceeding instituted under this article; but, upon a motion of the accused, such analyst shall be required to appear as a witness and be subject to cross-examination.

1917, c. 241, s. 15.

4828. Notice of charge to accused; hearing; duty of attorney-general. No prosecutions for violations of this article, if such violations are based on tests or analyses, shall be instituted except in the manner following: When the commissioner of agriculture finds that this article has been violated, as shown by test, examination, or analysis, he shall give notice to the person or firm in whose hands the seeds were found, designating a time and place for a hearing. This hearing shall be private, and the person or firm involved shall have the right to introduce evidence, either in person, by agent, or attorney. If, after said hearing, or without said hearing in case said person fails or refuses to appear, the commissioner decides that the evidence warrants prosecution, he shall proceed as herein provided. Moreover, it shall be the duty of the attorney-general, or, in his discretion, he may act through the attorney of the county or city in which said violation has occurred, to institute proceedings at once against the person or persons, firms or corporations charged with such violations: Provided, such proceedings for violation shall be instituted according to the laws of this state.

1917, c. 241, s. 15.

4829. State to test seed for citizens; fee. Any citizen of this state who does not make a business of selling seed shall have the privilege of having his seed tested in the seed laboratories of the commissioner of agriculture, free of charge; but all persons or firms desiring to sell or offer for sale seeds in this state shall have like privilege of said laboratory upon the payment of a fee of fifty cents for each sample tested.

1917, c. 241, s. 16.

4830. License tax for sale of seed. For the purpose of providing a fund to defray the expenses of the examination and analyses prescribed in this article, each person, firm, or corporation selling or offering for sale in or for export from this state any seed as mentioned in this article shall register with the department of agriculture the name of the person, firm, or corporation offering the seed for sale, and shall pay a license tax annually, on January first of each year, of twenty-five dollars. The commissioner's receipt for such money shall be license to conduct the business, and said person, firm, or corporation paying such tax shall not be required to pay any further tax under this article.

1917, c. 241, s. 17.

4831. Standards for seed established. The following standards of viability and of purity, meaning freedom from weed seeds, other foreign seeds, and inert matter, are hereby fixed. Seeds measuring up to the required standard may be

labeled and sold as "Standard Seeds," but seeds falling below the required standard of purity and viability may be sold in this state only provided they are properly tagged and labeled as required in sections 4812 and 4816 of this chapter.

Name of Seed.	Per Cent of Purity.	Per Cent of Viable Seed.
Alfalfa	98	80
Barley	98	90
Blue-grass, Kentucky	80	45
Clover, Alsike	97	80
Buckwheat	86	90
Clover, crimson	96	90
Clover, red	98	85
Clover, white	96	80
Corn, field	99	94
Fescue, meadow	95	85
Millet, pearl	98	90
Millet, common	96	85
Millet, hog	96	85
Oats	97	90
Oat grass, tall.....	72	70
Orchard grass	70	70
Rape	99	90
Redtop	90	80
Rye	97	90
Rye grass, perennial.....	96	90
Rye grass, Italian.....	95	80
Sorghum	96	80
Sudan grass	96	75
Timothy	98	86
Wheat	98	90
Vetch	96	50

Provided, that nothing in this article shall be construed to require a farmer selling seeds raised by himself to comply with the provisions hereof.

1917, c. 241, s. 18.

ART. 13. LINSEED OIL

4832. Inspection and analysis authorized. For the purpose of protection of the people of the state from imposition by the fraudulent sale of adulterated or misbranded linseed oil or flaxseed oil as pure linseed oil or flaxseed oil, the board of agriculture shall cause inspection to be made from time to time and samples of such oil offered for sale in the state obtained, and shall cause the same to be analyzed or examined or tested by the oil chemist or other experts of the department of agriculture for the purpose of ascertaining or determining if same is adulterated or misbranded within the meaning of this article or is otherwise offered for sale in violation of this article.

1917, c. 172, s. 1.

4833. "Raw" and "boiled" linseed oil defined. The term "raw linseed oil" as used herein shall be construed to mean the oil obtained wholly from commercially pure linseed or flaxseed, and the term "boiled linseed oil" as used herein shall be construed to mean linseed oil that has been heated in the process of its manufacture to a temperature of not less than two hundred and twenty-five degrees Fahrenheit.

1917, c. 172, s. 2.

4834. "Adulterated" linseed oil defined. For the purpose of this article linseed oil shall be deemed to be adulterated if it be not wholly the product of commercially pure and well cleaned linseed or flaxseed, and unless the oil also fulfills the requirements of the chemical test for pure linseed oil, described in the edition of the United States Pharmacopœia for the year nineteen hundred.

1917, c. 172, s. 3.

4835. Sale of prohibited products; statement required of dealer. No person, firm, or corporation, by himself or agent or as the agent of any other person, firm, or corporation, shall manufacture or mix for sale, sell, offer or expose for sale, or have in his possession with intent to sell under the name of raw linseed oil or boiled linseed oil, or under any name or device that suggests raw or boiled linseed oil, any article which is not wholly the product of commercially pure linseed or flaxseed, or that is adulterated or misbranded within the meaning of this article, except as is hereinafter provided, and any manufacturer, wholesaler, or jobber desiring to do business in the state shall file with the commissioner of agriculture a statement to that effect and furnish the name of the oil or oils which he proposes to sell by sample or otherwise, and that the oil or oils will comply with the requirements of this article.

1917, c. 172, s. 4.

4836. Drying agents; label to state name and percentage. Boiled linseed oil which has been heated to a temperature of not less than two hundred and twenty-five degrees Fahrenheit may contain drying agents not to exceed four per cent by volume, provided that the name and per cent of each drying agent present be plainly stated in connection with the name of the oil on the receptacle containing same: and Provided further, that the statement is printed in letters that meet the requirements of the regulations adopted by the board of agriculture under this article.

1917, c. 172, s. 5.

4837. Compounds, imitations, and substitutes regulated. Nothing in this article shall be construed to prohibit the sale of compound linseed oil, or imitation linseed oil, or any substance to be used as a substitute for linseed oil, provided the receptacle containing same shall be plainly and legibly stamped, stenciled, or marked compound linseed oil, or imitation oil, or with the name of the substance to be used for linseed oil, as the case may be: and Provided further, that the name is stenciled or marked on the container of same in a manner that will meet the requirements of the regulations adopted by the board of agriculture under this article.

1917, c. 172, s. 6.

4838. Containers to be marked with specified particulars. Before any raw linseed oil or any boiled linseed oil or any boiled linseed oil with drying agents added or any compound linseed oil or any imitation linseed oil or any other substance used or intended to be used as a substitute for linseed oil shall be sold or offered for sale in this state, the container in which same is kept for sale or sold shall have distinctly, legibly, and durably painted, stamped, stenciled, or marked thereon the true name of such oil or substance, setting forth in bold-face capital letters that meet the regulations prescribed by the board of agriculture, whether it be raw linseed oil or boiled linseed oil with drying agent added, or a compound linseed oil or an imitation linseed oil or a substitute for linseed oil, as the case may be; and the container, if a wholesale package, shall also bear the name and address of the manufacturer or jobber of such oil.

1917, c. 172, s. 7.

4839. Entry for samples authorized. The inspectors or agents of the department of agriculture, authorized to make inspection under this article, shall have authority, during business hours, to enter all stores, warehouses, or any other place where products named in this article are stored or sold or offered for sale, for the purpose of inspection and obtaining samples of such products.

1917, c. 172, s. 8.

4840. Refusing samples or obstructing article forbidden. Every person who offers for sale or delivers to a purchaser any article named in this article shall furnish, within business hours and upon the payment or tender of the selling price, a sample of such product to any person duly authorized to secure the same, and who shall apply to such vender for such sample of such article in his possession; and any dealer or vender who refuses to comply, upon demand, with the requirements of this section, or any person who shall impede, hinder, or obstruct or otherwise prevent or attempt to prevent any chemist, inspector, or agent of the department in the performance of his duty in connection with this article, shall be guilty of a violation of this article.

1917, c. 172, s. 8.

4841. Violations of article a misdemeanor. Any person who shall violate any of the provisions of this article shall be guilty of a misdemeanor, and for such offense, upon conviction thereof, shall be fined not exceeding one hundred dollars for the first offense and for each subsequent offense in the discretion of the court.

1917, c. 172, s. 9.

4842. Forfeiture for unauthorized offer; disposal of proceeds. The oil offered for sale in violation of this article shall be subject to seizure, condemnation, and sale by the commissioner of agriculture, as is provided for the seizure, condemnation, and sale of commercial fertilizer; and the proceeds thereof, if sold, less the legal cost and charges, shall be paid into the treasury for the use of the department of agriculture in executing the provisions of this article.

1917, c. 172, s. 9.

4843. Commissioner to certify solicitor and furnish facts. If it shall appear from the inspection or other examination of oils that any of the provisions of this article have been violated, besides the action above provided for, the commis-

sioner of agriculture shall certify the facts to the solicitor in the district in which the violation was committed, and furnish the officer with the facts in the case, duly authenticated by the expert, under oath, who made the examination.

1917, c. 172, s. 10.

4844. Solicitor to prosecute. It shall be the duty of the solicitor to prosecute such cases for fines and penalties provided for in this article in courts of competent jurisdiction.

1917, c. 172, s. 10.

4845. Inspection tax. For the purpose of defraying expenses incurred in the enforcement of the provisions of this article there shall be paid to the commissioner of agriculture an inspection tax of one-half cent per gallon for any and all linseed oil or compound linseed oil or any substance used or intended to be used as a substitute for linseed oil, which payment shall be made before the delivery of such oil to any agent, retail dealer, or consumer in this state.

1917, c. 172, s. 11.

4846. Tax tags. Each can, barrel, tank, or other container of oils named in this article shall have attached thereto an inspection tag or stamp stating that the inspection charges specified in this article have been paid; and the commissioner of agriculture, with the advice and consent of the board, is hereby authorized to prescribe a form for such tags or stamps: Provided, that they shall be such as to meet the requirements of the trade of linseed oil.

1917, c. 172, s. 11.

4847. Refilling containers and misuse of tags prohibited. The refilling of a container bearing an inspection tag or stamp on which the inspection tax has not been paid or the use of an inspection tag or stamp a second time shall constitute a violation of this article.

1917, c. 172, s. 12.

4848. Rules to enforce article; misdemeanor. The board of agriculture is hereby authorized to adopt such rules and regulations in regard to handling linseed oil, refilling containers, and use of inspection tags or stamps a second time, as will insure the enforcement of the provisions of this article, and a violation of the said rules or regulations shall constitute a violation of this article.

1917, c. 172, s. 13.

4849. Dealer released by guaranty of wholesaler. No dealer shall be prosecuted under the provisions of this article when he can establish a guaranty signed by the manufacturer, jobber, wholesaler, or other party from whom he purchased such article, designating it, to the effect that the same is not adulterated or misbranded within the meaning of this article. Said guaranty, to afford protection, shall contain the name and address of the party or parties making the sale of such article to such dealer, and in such cases said party or parties, if in this state, shall be amenable to the prosecutions, fines, and other penalties which would attach, in due course, to the dealer under the provisions of this article: Provided, that the above guaranty shall not afford protection to any dealer after the first

offense in connection with a product from a particular manufacturer, jobber, or wholesaler, or for the sale of oil which is not properly labeled, branded, stamped, or tagged, or on which the inspection tax has not been paid.

1917, c. 172, s. 14.

ART. 14. ILLUMINATING OILS AND GASOLINE

4850. Gasoline defined. The term "gasoline," wherever used in this article, shall be construed to include naphtha, benzine, and other like liquids and fluids used for heating and power purposes.

1917, c. 166, s. 1; 1909, c. 554.

4851. Inspection authorized; collection and analysis of samples. All kerosene or other illuminating oils and all gasoline used or intended to be used for heating or power purposes in internal combustion, motors, or otherwise, shall be subject to inspection and test under the direction of the board of agriculture. In case of illuminating oils to determine the safety and value for illuminating purposes, and in case of gasoline for the purpose of preventing adulteration, deception, or fraud in the sale thereof.

The department of agriculture shall have power at all times and at all places to have collected samples of illuminating oils or gasoline offered for sale in this state and to have the same analyzed.

1909, c. 554, s. 1; 1917, c. 166, s. 2.

4852. Rules and standards to enforce article. The department of agriculture is authorized to make all necessary rules and regulations for the inspection of such oils or gasolines and to adopt standards not in conflict with the provisions of this article as to the safety, purity, or absence from objectionable substances and luminosity of oils, and as to the quality, purity, and power and heat-producing properties or absence from objectionable substances of gasoline as they may deem necessary to provide the people of the state with satisfactory illuminating oil and with gasoline of a satisfactory quality.

1909, c. 554, s. 1; 1917, c. 166, s. 2.

4853. Statement required to be filed before sale. All manufacturers, wholesalers and jobbers, before selling or offering for sale in this state any kerosene or other oil for illuminating purposes, or gasoline for the purposes enumerated in the second preceding section, shall file with the commissioner of agriculture a statement that they desire to do business in this state, and furnish the name or brand of the oils or gasolines which they desire to sell, with the name and address of the manufacturer, producer, or refiner, and that the oil or gasoline will comply with the requirements of this article.

1909, c. 554, s. 1; 1917, c. 166, s. 2.

4854. Inspectors; appointment and compensation. The board of agriculture shall appoint such number of inspectors to carry out the provisions of this article as to illuminating oils and gasoline as may be necessary, not exceeding ten, whose compensation shall be five dollars each per day and actual traveling expenses.

1909, c. 554, s. 2; 1911, c. 143; 1917, c. 166, s. 3; 1919, c. 9.

4855. Qualification and duties of inspectors. Each inspector, before entering upon his duties, shall take an oath of office before some person authorized to administer oaths. The inspectors shall have power to examine all barrels, tanks, or other vessels containing kerosene or other illuminating oils, or gasoline, to see if they are properly tagged or stamped as required by this article; and they shall, as directed, collect samples of oil or gasoline offered for sale in the state and send the same to the department of agriculture for examination.

1909, c. 554, s. 2; 1917, c. 166, s. 3.

4856. Inspection taxes; tax tags; tank-car shipments. For the purpose of defraying the expenses connected with enforcing the provisions of this article there shall be paid to the commissioner of agriculture a charge of one-fourth of one cent per gallon upon illuminating oil or gasoline, which payment shall be made before delivery to agents, dealers, or consumers in this state. Each barrel, tank, car, or other container of oil or gasoline shall have attached thereto a tag or stamp stating that all charges specified in this section have been paid, and the commissioner of agriculture, with the advice and consent of the board of agriculture, is hereby empowered to prescribe the form of such tags: Provided, that they shall be of such form as to meet the requirements of the trade in oil or gasoline, and to adopt such rules and regulations as will insure the proper enforcement of this article.

Where oil or gasoline is shipped in tanks, cars, or other large containers, the manufacturer or jobber shall give notice to the commissioner of agriculture of their shipment, with the name and address of the person, company, or corporation to whom it is sent, and the number of gallons, on the day the shipment is made.

No county, city, or town shall impose any license or other tax on the sale of gasoline as defined in the first section of this article.

1909, c. 554, s. 3; 1917, c. 166, s. 4; 1917, c. 238.

4857. Oil inspection fund; disbursement; surplus. All moneys received under the provisions of this article from the inspection tax on illuminating oils shall be paid into the state treasury and kept as a distinct fund, to be styled "The Oil Inspection Fund." All checks or orders in payment for tags or stamps shall be made payable to the state treasurer. The commissioner of agriculture is authorized to draw out of said fund, upon his warrants, such sum as may be necessary to pay all expenses incurred in connection with the enforcement of this article in regard to illuminating oils, including salary of oil chemist or chemists, cost of inspection, tags, blanks, etc.

The state treasurer shall, on the first day of June and December each year, turn into the general fund of the state all moneys of the oil fund in hand in excess of the amount drawn out by the commissioner of agriculture for expenses.

1909, c. 554, ss. 4, 5.

4858. Gasoline fund; disbursement. All moneys received under the provisions of this article in connection with the inspection tax on gasoline shall be paid into the state treasury and kept as a distinct fund, to be styled "The Gasoline Fund." All checks or orders in payment for tags or stamps shall be made payable to the

state treasurer. The commissioner of agriculture is authorized to draw out of said fund, upon his warrants, such sums as may be necessary to pay all expenses incurred in connection with the enforcement of this article in regard to gasoline. 1917, c. 166, s. 5.

4859. Commissioner to report to legislature. The commissioner of agriculture shall include in his report to the general assembly an account of the operation and expenses under this article.

1909, c. 554, s. 6; 1917, c. 166, s. 6.

4860. Analysis on complaint; sale forbidden; result reported. Whenever a complaint is made to the department of agriculture in regard to the qualities of any illuminating oil or gasoline sold in this state, the commissioner of agriculture shall cause a sample thereof to be procured and have the same thoroughly analyzed and tested, in the case of illuminating oil as to its safety and illuminating qualities, and in the case of gasoline to determine if it meets the requirements of the standards adopted by the board of agriculture under this article, or is as represented by the dealer. If the analysis or other tests shall show in the case of oil that it is either unsafe or of inferior illuminating quality, or in the case of gasoline that it is not as represented or does not meet any of the requirements of this article, the sale of such oil or gasoline shall be forbidden, and a report of the result or results of such analysis shall be sent to the party making complaint and to the dealers in and manufacturer thereof.

1909, c. 554, s. 7; 1917, c. 166, s. 7.

4861. Misuse of, or omitting stamp, or violating rules a misdemeanor. Every person who shall fraudulently brand or stamp any package or barrel or other vessel, or use a stamp a second time, or keep any kerosene, illuminating oil or gasoline which has not been marked and branded in accordance with the regulations of the board of agriculture, or who shall violate any other of the provisions of this article, or any regulation adopted by the board of agriculture for its enforcement, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than two hundred dollars nor more than one thousand dollars: Provided, that in case of violation of the provisions of this section in respect to gasoline, upon conviction of a second or any subsequent offense the defendant may be imprisoned for not exceeding six months, in the discretion of the court.

1909, c. 554, s. 8; 1917, c. 166, s. 8.

4862. Rules as to gasoline to be published. It shall be the duty of the commissioner of agriculture to publish at least annually in the bulletin of the department the rules and regulations established by the board of agriculture for the purpose of carrying into effect the provisions of this article as to gasoline.

1917, c. 166, s. 9.

4863. Sale without tag or altering tag a misdemeanor. If any person, manufacturer, or dealer shall sell or offer for sale in this state any illuminating oil or gasoline before first having the same labeled and tagged, as required by this article and by the regulations adopted by the board of agriculture, he shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding three hundred

dollars or, in case his offense be the sale or offer for sale of gasoline, be imprisoned not exceeding six months, and the oil or gasoline so offered for sale shall be forfeited and sold, and the proceeds of such sale shall go to the common school fund of the state. If any manufacturer or dealer in said oil or gasoline shall, with intent to defraud, alter or erase the label or tag to indicate a different standard or quantity than is indicated by the label or stamp attached to the vessel, he shall, upon conviction, be fined not exceeding two hundred dollars for every such offense, or, in case the alteration or erasure be of a gasoline tag, be imprisoned not exceeding three months.

1909, c. 554, s. 9; 1917, c. 166, s. 10.

4864. Inspectors not to be interested in the business. Any inspector who, while in office, shall be interested directly or indirectly in the manufacture or vending of any illuminating oils or gasoline shall be guilty of a misdemeanor, and upon conviction shall be fined not less than three hundred dollars.

1909, c. 554, s. 10; 1917, c. 166, s. 11.

4865. Prosecutions for fines and penalties. All prosecutions for fines and penalties under the provisions of this article shall be by indictment in a court of competent jurisdiction.

1909, c. 554, s. 11; 1917, c. 166, s. 12.

4866. Retailer of oil released when wholesaler complies with article. The provisions of this article shall not apply to the retail dealer in oils unless such retail dealer shall sell or offer to sell oils of the manufacturer, wholesaler, or jobber who refuses to comply with the provisions of this article.

1909, c. 554, s. 12.

4867. Violation of rules as to gasoline unlawful. Any violation of any of the rules and regulations established by the board of agriculture for the enforcement of this article shall be deemed a violation thereof.

1917, c. 166, s. 15.

4868. Substitutes for motor fuels, etc., regulated. All materials, fluids, or substances offered or exposed for sale, purporting to be substitutes for or motor fuel improvers, or other motor fuels to be used for power or heating purposes, shall, before being sold, exposed or offered for sale, be submitted to the commissioner of agriculture for examination and inspection, and shall only be sold or offered for sale when properly labeled with a label, the form and contents of which label has been approved by the said commissioner of agriculture in writing.

1917, c. 166, s. 13.

4869. Labels for containers and their use; violation of section a misdemeanor. Every person delivering at wholesale or retail any gasoline in this state shall deliver the same to the purchaser only in tanks, barrels, casks, cans, or other containers having the word "gasoline," or the name of such other like products of petroleum, as the case may be, in English, plainly stenciled or labeled in vermilion red, to meet the requirements of the regulations adopted by the board of agricul-

ture under this article. Such dealer shall not deliver kerosene oil in any barrel, cask, can, or other container which has not been stenciled or labeled as hereinbefore provided. Every person purchasing gasoline for use or sale shall procure and keep the same only in tanks, barrels, casks, cans, or other container stenciled or labeled as hereinbefore provided: Provided, that nothing in this section shall prohibit the delivery of gasoline by hose or pipe from a tank directly into the tank of any automobile or any other motor: Provided further, that in case gasoline is sold in bottles, cans, or packages of not more than one gallon for cleaning and other similar purposes, the label shall also bear the words "Unsafe when exposed to heat or fire."

1917, c. 166, s. 17.

4870. Violation a misdemeanor. Any person violating any of the provisions of the above section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than twenty-five dollars. It shall be the duty of the board of agriculture to enforce the provisions of this article.

1917, c. 166, s. 14.

ART. 15. ANIMAL DISEASES

Part 1. Quarantine

4871. Proclamation of live-stock quarantine. Upon the recommendation of the commissioner of agriculture, it shall be lawful for the governor to issue his proclamation forbidding the importation into this state of any and all kinds of live stock from any state where there is known to prevail contagious or infectious diseases among the live stock of such state.

1915, c. 174, s. 1.

4872. Proclamation of infected feedstuff quarantine. Upon the recommendation of the commissioner of agriculture, it shall be lawful for the governor to issue his proclamation forbidding the importation into this state of any hay, feedstuff, or other article dangerous to live stock as a carrier of infectious or contagious disease from any state where there is known to prevail contagious or infectious disease among the live stock of such state.

1915, c. 174, s. 2.

4873. Rules to enforce quarantine. Upon such proclamation being made, the commissioner of agriculture shall have power to make rules and regulations to make effective the proclamation and to stamp out such infectious or contagious diseases as may break out among the live stock in this state.

1915, c. 174, s. 3.

4874. Violation of proclamation or rules. Any person, firm, or corporation violating the terms of the proclamation of the governor, or any rule or regulation made by the commissioner of agriculture in pursuance thereof, shall be guilty of a misdemeanor and fined or imprisoned in the discretion of the court.

1915, c. 174, s. 4.

NOTE.—Violations of department's rules as to cattle diseases and quarantine is a misdemeanor. See this chapter, s. 4688 (3).

Part 2. Foot and Mouth Disease

4875. Appropriation to combat the disease. If the foot and mouth disease shall occur or seem likely to appear in this state and the agricultural department has no funds available to immediately meet the situation in coöperation with the United States department of agriculture, the state treasurer, upon the approval of the governor, shall set aside out of funds not otherwise appropriated such sum as the governor shall deem necessary and who will notify the treasurer of the amount, to be known as the foot and mouth appropriation, to be used by the state agricultural department in the work of preventing or eradicating this disease.

The same shall be paid only for work in this connection upon warrants approved by the commissioner of agriculture.

1915, c. 160, s. 1.

4876. Disposition of surplus funds. If said disease shall have appeared and shall have been eradicated and work is no longer necessary in connection with it, the state treasurer shall return such part of the appropriation as is not expended to the general fund, and the commissioner of agriculture shall furnish the governor an itemized statement of the money expended, and all moneys set aside out of the state funds and used for the purpose of eradicating said disease under the provisions of this article shall be paid back to the state funds by the department of agriculture out of the first funds received by said agricultural department available for such purpose.

1915, c. 160, s. 2.

Part 3. Hog Cholera

4877. Burial of hogs dying natural death required. It shall be the duty of every person, firm, or corporation who shall lose a hog by any form of natural death to have the same buried in the earth to a depth of at least two feet within twelve hours after the death of the animal. Any person, firm, or corporation that shall fail to comply with the terms of this section shall be guilty of a misdemeanor, and shall be fined not less than five dollars nor more than ten for each offense, at the discretion of the court.

1915, c. 225.

For liability for allowing diseased hogs to run at large, see section 4490.

4878. Price of serum to be fixed. The department of agriculture shall fix the price of anti-hog-cholera serum at such an amount as will cover the cost of production.

1917, c. 275, s. 1; 1919, c. 6.

4879. Manufacture and use of serum and virus restricted. It shall be unlawful for any person, firm, or corporation to distribute, sell, or use in the state anti-hog-cholera serum unless said anti-hog-cholera serum is produced at the serum plant of the state department of agriculture, or produced in a plant which is licensed by the United States department of agriculture, bureau of animal industry, allowing said plant to do an interstate business.

It shall be unlawful for any person, firm, or corporation to distribute, sell, or use in the state of North Carolina, virulent blood from hog-cholera-infected

hogs, or virus, unless said virulent blood, or virus, is produced at the serum plant of the state department of agriculture or produced in a plant which is licensed by the United States department of agriculture, bureau of animal industry, allowing said plant to do an interstate business. No virulent blood from hog-cholera-infected hogs, or virus, shall be distributed, sold or used in the state unless and until permission has been given in writing by the state veterinarian for such distribution, sale or use. Said permission to be canceled by the state veterinarian when necessary.

Any person, firm, or corporation guilty of violating the provisions of this section or failing or refusing to comply with the requirements thereof shall be guilty of a misdemeanor.

1919, c. 125, ss. 1, 2, 3.

4880. Provision for serum plant. The North Carolina state board of agriculture, for the purpose of preparation of anti-hog-cholera serum, shall have the use and control of so much of a tract of land owned by the state as may be desirable for the purpose herein mentioned. The said land was purchased by the state from W. A. Myatt and wife by deed dated May third, one thousand eight hundred and eighty-nine, and contains seventy-eight acres, more or less, and joins the city farm of the city of Raleigh. The board of agriculture shall use the said tract for the raising, feeding, and care of hogs and the erection and equipping of such buildings and appliances as may be necessary in connection with said work and for preparing said serum, the same to be distributed by the state veterinarian at cost to the people of the state applying for same.

1913, c. 161, s. 1.

NOTE.—Plant used also for diphtheria serum, see Public Health, s. 7170.

4881. Counties authorized to purchase and supply serum. If the county commissioners of any county in the state deem it necessary to use anti-hog-cholera serum to control or eradicate the disease known as hog cholera, they are authorized within their discretion to purchase from the state department of agriculture sufficient anti-hog-cholera serum and virus for use in their county and supply same free of cost to the residents of the county, or pay for any portion of the cost of said serum, the remaining portion to be paid by the owners of the hogs.

The use of anti-hog-cholera serum and virus and the quarantine of diseased animals shall remain under the supervision of the state veterinarian.

Nothing in this section shall in any way interfere with existing laws and regulations covering the use of anti-hog-cholera serum and virus and the quarantine and control of contagious diseases, or any laws or regulations that may become necessary in the future.

1919, c. 132.

Part 4. Compensation for Killing Diseased Animals

4882. State to pay part of value of animals killed on account of disease. If it appears to be necessary for the control or eradication of tuberculosis in cattle, or glanders in horses and mules, to destroy such animals affected with such diseases and to compensate owners for loss thereof, the state veterinarian is authorized, within his discretion, to agree on the part of the state, in the case of cattle destroyed for tuberculosis, to pay one-third of the difference between the

appraised value of each animal so destroyed and the value of the salvage thereof: Provided, that in no case shall any payment by the state be more than twenty-five dollars for any grade animal nor more than fifty dollars for any pure-bred animal. In the case of horses or mules destroyed for glanders to pay one-half of the appraised value, said half not to exceed one hundred dollars.

1919, c. 62, s. 1.

Misdemeanor not to kill animal having glanders or farcy, section 4489.

4883. Appraisal of cattle affected with tuberculosis. Cattle affected with tuberculosis shall be appraised by three men—one to be chosen by the owner, one by the United States bureau of animal industry, and one by the state veterinarian. If the United States bureau of animal industry is not represented, then the appraisers shall be chosen, one by the owner, one by the state veterinarian, the third to be chosen by the first two named. The finding of such appraisers shall be final.

1919, c. 62, s. 2.

4884. Appraisal of animals affected with glanders; report. Animals affected with glanders shall be appraised by three men—one to be chosen by the owner, one to be chosen by the state veterinarian, the third to be named by the first two chosen, the finding of such appraisers to be final. The report of appraisal to be made in triplicate on forms furnished by the state veterinarian, and a copy sent to the state veterinarian at once.

1919, c. 62, s. 3.

4885. Report of appraisal on tuberculous cattle to state veterinarian; contents. Appraisals of tuberculous cattle shall be reported on forms furnished by the state veterinarian, which shall show the number of animals, the appraised value of each per head, or the weight and appraised value per pound, and shall be signed by the owners and the appraisers. This report must be made in triplicate and a copy sent to the state veterinarian.

1919, c. 62, s. 4.

4886. Provision for owner of tuberculous cattle to market and report. Each owner of tuberculous cattle, which have been appraised, and which have been authorized by the state veterinarian to be marketed, shall market the cattle within thirty days and shall obtain from the purchaser a report in triplicate. One copy to be sent to the state veterinarian at once, certifying as to the amount of money actually paid for the animals, all animals to be identified on report.

1919, c. 62, s. 5.

4887. Report on salvage. When the appraised cattle have been slaughtered and the amount of salvage ascertained, a report, on forms furnished by the state veterinarian, in triplicate shall be made, signed by the owner and the United States bureau of animal industry or state inspector and the appraisers by which the animals were appraised and destroyed, showing the difference between the appraised value and salvage. Two copies to be attached to the voucher in which compensation is claimed, and one copy to be furnished by the owner of cattle.

1919, c. 62, s. 6.

4888. Compensation when killing ordered. Compensation for animals destroyed on account of glanders will only be paid when such destruction is or-

dered by the state veterinarian or his authorized representative. When the owner of the animals presents his claim he shall support same with the original report of the appraiser, together with the report of the inspector who destroyed the animal, to the state veterinarian.

1919, c. 62, s. 7.

4889. Ownership of destroyed animals; outstanding liens. When animals have been destroyed pursuant to this article the inspector shall take reasonable precautions to determine, prior to his approval of vouchers in which compensation is claimed, who is the owner of and whether there are any mortgages or other liens outstanding against the animals. If it appears that there are outstanding liens, a full report regarding same shall be made and shall accompany the voucher. Every such report shall include a description of the liens, the name of the person or persons having possession of the documentary evidence, and a statement showing what arrangements, if any, have been made to discharge the liens outstanding against the animals destroyed of which the inspector may have knowledge.

1919, c. 62, s. 8.

4890. State not to pay for feed of animals ordered killed. Expense for the care and feeding of animals held for slaughter shall not be paid by the state.

1919, c. 62, s. 9.

4891. Disinfection of stockyards by owners. Stockyards, pens, cars, vessels and other premises and conveyances will be disinfected whenever necessary for the control and eradication of disease by the owners at their expense under the supervision of an inspector of the United States bureau of animal industry or state veterinarian.

1919, c. 62, s. 10.

4892. Payments made only on certain conditions. No payments shall be made for any animal slaughtered in the following cases:

1. If the owner does not disinfect premises, etc., as directed by an inspector of the United States bureau of animal industry or the state veterinarian.

2. For any animals destroyed where the owner has not complied with all lawful quarantine regulations.

3. Animals reacting to a test not approved by the state veterinarian.

4. Animals belonging to the United States.

5. Animals brought into the state in violation of the state laws and regulations.

6. Animals which the owner or claimant knew to be diseased, or had notice thereof, at the time they came into their possession.

7. Animals which had the disease for which they were slaughtered or which were destroyed by reason of exposure to the disease, at the time of their arrival in the state.

8. Animals which have not been within the state of North Carolina for at least one hundred and twenty days prior to the discovery of the disease.

9. Where owner does not use reasonable care in protecting animals from disease.

10. Where owner has failed to submit the necessary reports as required by this article.

1919, c. 62, s. 11.

4893. Owner's claim for indemnity supported by reports. The owner must present his claim for indemnity to the state veterinarian for approval, and the claim shall be supported with the original report of the appraisers, the original report of the sale of the animals in the case of cattle destroyed on account of tuberculosis, the certificate of the state or United States bureau of animal industry inspector, and a summary of the claim. All of which shall constitute a part of the claim.

The owner must state whether or not the animals are owned entirely by him or advise fully of any partnership, and describe fully any mortgages or other liens against the animals.

1919, c. 62, s. 12.

4894. State veterinarian to carry out provisions of article; how moneys paid out. The state veterinarian is authorized, himself or by his representative, to do all things specified in this article. All moneys authorized to be paid shall be paid from the state treasury on warrant approved by the auditor, and the state treasurer is hereby authorized to make such payment.

1919, c. 62, s. 13.

4895. Appropriation to pay indemnities. A sum not to exceed five thousand dollars annually is hereby appropriated to pay the indemnities as provided for in this article out of funds not otherwise appropriated.

1919, c. 62, s. 14.

ART. 16. CROP PESTS

4896. Crop pest commission. The board of agriculture shall be the crop pest commission.

1909, c. 90, s. 1.

4897. Powers and duties of commission; establish regulations. The board of agriculture shall, from time to time, as it may deem necessary, prepare and publish a list of dangerous crop pests, known to be within the state, or liable to be introduced, and shall also publish methods for exterminating such pests as it may deem capable of being economically exterminated, for repressing such as cannot be economically exterminated, and for preventing their spread within the state. It may also adopt regulations not inconsistent with the laws or constitutions of this state and of the United States, for preventing the introduction of dangerous crop pests from without the state, and for governing common carriers in transporting plants liable to harbor such pests to and from the state; which regulations shall have the force of law. Any violation of any such regulations shall be a misdemeanor, and the person violating the same shall upon conviction be fined or imprisoned in the discretion of the court.

Rev., s. 3980; 1897, c. 264, s. 2; 1909, c. 90, s. 1.

4898. Crop pests declared nuisance; method of abatement. No person shall knowingly and wilfully keep upon his premises any plant infested by any dan-

gerous crop pest, listed and published as such by the board of agriculture, or permit dangerous weed pests to mature seed or otherwise multiply upon his land, except under such regulations as the board of agriculture may prescribe. All such infested plants and premises are hereby declared public nuisances. The owner of such plants or premises shall, when notified to do so by the board of agriculture, take such measures as may be prescribed to eradicate such pests. If such action is not taken, or is improperly executed within ten days after such notification, the board of agriculture shall cause such premises to be freed from such pests by the best available method. The cost of such work shall be a lien upon the premises, and may be recovered, together with cost of action, before any court having jurisdiction. The notice shall be written and mailed to the usual or known address, or left at the ordinary place of business of the owner or his agent. No damages shall be awarded the owner of such premises for entering thereon and destroying or otherwise treating any infested plant or crop, when done by the order of the board of agriculture.

Rev., s. 3981; 1897, c. 264, s. 3; 1909, c. 90, s. 1.

4899. Right to enter and inspect premises. Whenever the board of agriculture has reason to suspect that any pest, listed as dangerous, exists in any portion of the state, it shall cause an investigation to be made by some person capable of determining the specific identity of such pest, and, if it be found to exist, the board of agriculture shall further appoint a competent person as its agent to inspect such infested premises, and to take such measures for treating the same as the board may direct. Any duly authorized agent of the board of agriculture shall have authority to enter upon and inspect any premises between the hours of sunrise and sunset during every working day of the year.

Rev., s. 3982; 1897, c. 264, s. 4; 1909, c. 90, s. 1.

4900. Preventing inspection or hindering execution of article a misdemeanor. If any one shall seek to prevent inspection of his premises as provided in the preceding section, or shall otherwise interfere with any agent of the commission, or board of agriculture while in performance of his duties under the preceding section, he shall, upon conviction, be fined not less than five nor more than fifty dollars for each offense, or may be imprisoned for not less than ten nor more than thirty days.

Rev., 3713; 1907, c. 876.

NOTE.—Violation of department's rules as to insect pests is a misdemeanor. See this chapter, s. 4688 (4).

ART. 17. COTTON GRADING

4901. Federal standards recognized. The standards or grades of cotton established or which may be hereafter established by the secretary of agriculture by virtue of acts of congress shall be recognized as the standards in transactions by and between citizens of this state in transactions relating to cotton.

1915, c. 23, s. 1.

4902. Duplicates of federal samples may be used. The commissioner of agriculture shall obtain from the secretary of agriculture a duplicate of each of

these samples as represent cotton produced in this state for the use of the citizens of the state who may desire to use them in settlement of any disputed transaction.

1915, c. 23, s. 2.

4903. Expert graders to be employed. The North Carolina department of agriculture and the North Carolina State College of Agriculture and Engineering, acting together as provided in part 3 of article 1 of this chapter, entitled "Joint Committee on Agricultural Work," or separately, shall have authority to employ expert cotton graders to grade cotton in this state under such rules and regulations as they may adopt. The above institutions may seek the aid of the United States department of agriculture in the prosecution of this work, and shall have authority to enter into such contracts or arrangements as shall be mutually agreeable in furtherance of the object and purpose of this article.

1915, c. 175, s. 1.

4904. County commissioners to coöperate. Any board of commissioners of any county in North Carolina is authorized and empowered to coöperate with either, or both, of the above-named institutions in aid of the purposes of this article; and shall have authority to appropriate such sums of money as the said board shall deem wise and expedient.

1915, c. 175, s. 2.

4905. Grading done at owner's request; grades as evidence. The expert graders, employed by either of the above-named institutions, or by the United States government, shall have full right, power, and authority to grade any cotton in North Carolina upon the request of the owner of said cotton; and said graders shall grade and classify, agreeable to and in accordance with the standards or grades of cotton which are now or may hereafter be established by the secretary of agriculture by virtue of any act of congress. The grade, or classification, pronounced by said expert graders of all cotton graded by them shall be prima facie proof of the true grade or classification of said cotton, and shall be the basis of all cotton sales in this state.

1915, c. 175, s. 3.

4906. Grader's certificate admissible as evidence. In the event of any dispute or trial pending in any of the courts of this state, the certificate of any expert grader, employed as above provided, and acknowledged or proven before any clerk of the superior court of any county in the state, shall be admissible in evidence as to the grade or classification of cotton graded or classified by said expert.

1915, c. 175, s. 4.

ART. 18. MARKETING COTTON

4907. Purpose of article. In order to protect the financial interests of North Carolina by stimulating the development of an adequate warehouse system for our great staple crop, cotton, in order to enable growers of cotton more successfully to withstand and remedy periods of depressed prices, in order to provide a modern system whereby cotton may be more profitably and more scientifically

marketed, and in order to give this important crop the standing to which it is justly entitled as collateral in the commercial world, a cotton warehouse system for the state of North Carolina is hereby established as hereinafter provided.

1919, c. 168, s. 1.

The purpose of this article explained: *Bickett v. Tax Commission*, 177-433. The governor, the state board of agriculture, and the state warehouse superintendent are proper parties plaintiff in an action against the state tax commission to enforce the execution of this article: *Ibid.* The sections of this article are constitutional: *Ibid.*

4908. Board of agriculture administers article, makes rules, appoints superintendent. The provisions of this article shall be administered by the state board of agriculture, through a suitable person to be selected by said board and known as the state warehouse superintendent. In administering the provisions of this article the board of agriculture is empowered to make and enforce such rules and regulations as may be necessary to make effective the purposes and provisions of this article and to fix and prescribe reasonable charges for storing cotton in the local warehouses and publish the same from time to time, as the board may deem necessary.

1919, c. 168, s. 2.

See *Bickett v. Tax Commission*, 177-433.

4909. Employment of officers and assistants. The board of agriculture shall have authority to employ a warehouse superintendent and necessary assistants, local managers, inspectors, expert cotton classers, and such other employees as may be necessary in carrying out the provisions of this article, and fix and regulate their salaries and duties.

1919, c. 168, s. 3.

4910. Bonds of superintendent and employees. The person named as state warehouse superintendent shall give bond to the state of North Carolina in the sum of one hundred thousand dollars to guarantee the faithful performance of his duties and to safeguard the system against loss through him, the expense of said bond to be paid by the state, to be approved as other bonds for state officers. The superintendent shall, to safeguard the interests of the state, require bonds from other employees authorized in this article, in amounts at least as large as he may find that ordinary business experience in such matters would suggest as ample.

1919, c. 168, s. 4.

4911. Fund for support of system; collection and investment. In order to provide a sufficient indemnifying or guarantee fund to cover any loss not covered by the bonds hereinbefore mentioned, in order to provide the financial backing which is essential in order to make the warehouse receipts universally acceptable as collateral, and in order to provide that a state warehouse system intended to benefit all cotton growers in the state shall be supported by the class it is designed to benefit, it is hereby declared: That on each bale of cotton ginned in this state in the two years ending June thirtieth, one thousand nine hundred and twenty-one, twenty-five cents shall be collected, through the ginner of the bale, and paid into the state treasury, to be held there as a special guarantee or indemnifying fund to safeguard the state warehouse system against any losses not otherwise covered.

The state tax commission shall provide and enforce the machinery for the collection of this tax, which shall be held in the state treasury to the credit of the state warehouse system. At least one-half of this amount shall be invested in United States government or farm loan bonds, or North Carolina bonds, and the remainder may be invested in amply secured first mortgages to aid and encourage the establishment of warehouses operating under this system, such investments to be made by the board of agriculture with the approval of the governor and attorney-general: Provided, such first mortgages shall be for not more than one-half the actual value of the warehouse property covered by such mortgages, and run for not more than ten years.

1919, c. 168, s. 5.

The tax of twenty-five cents on each bale is in the nature of a tax on trades or business, and is constitutional: *Bickett v. Tax Commission*, 177-433.

4912. Qualifications of warehouse manager. No man shall be employed as manager of a warehouse unless the members of the board of county commissioners and the president of some bank in the county in which the warehouse is operated shall certify to the state warehouse superintendent that the person desiring to be warehouse manager is in their opinion a man of good character, competent, and of good reputation, deserving the confidence of the people.

1919, c. 168, s. 6.

4913. Negotiable receipts issued for cotton stored; rules and restrictions. For all cotton stored the warehouse manager shall fill in a negotiable official receipt, which shall be signed in pen and ink by him and countersigned by the cotton weigher of the market town or by some other person approved by the county commissioners as being competent and of good character. Such receipt shall also be signed by the state warehouse superintendent or his duly authorized agent: Provided, no warehouse receipt issued by a local manager to himself shall be valid. The state warehouse superintendent shall in each case name the person authorized to countersign receipts for any warehouse.

1919, c. 168, s. 7.

4914. Issuance of coupons with receipts; form and use. There shall be issued to each warehouse manager by the state superintendent of warehouses a sufficient number of engraved coupons, each representing one bale of cotton stored in the warehouse operated under this article; but coupons furnished at any one time shall not exceed ten per cent of the storage capacity of such warehouse as expressed in bales. Such coupons shall state on their face that they are worthless of themselves; but to each warehouse receipt one such coupon shall be attached for each bale of cotton covered by the receipt, the receipt itself stating that it is not good for a greater number of bales than there are coupons attached; and such coupons must be returned to the warehouse, along with the receipt.

1919, c. 168, s. 8.

4915. Superintendent to accept federal standards. The warehouse superintendent shall accept as authoritative the standards and classifications of cotton established by the federal government.

1919, c. 168, s. 9.

4916. Duties of superintendent; manner of operating warehouse system. The state warehouse superintendent shall have the power to lease for stated terms property for the warehousing of cotton: Provided, no rent shall be paid until the operating expenses of such warehouses so leased shall have been paid from the income of the warehouse so leased, and in no case shall the state be responsible for any rent except for the income of such warehouses so leased in excess of operating expenses; and said superintendent shall fix the terms upon which private or corporate warehouses may obtain the benefit of state supervision and operation. And it shall be his especial duty to foster and encourage the erection of warehouses in the various cotton-growing counties of the state for operation under the terms of this article and to provide an adequate system of inspection and of rules, forms, and reports to insure the security of the system; such matters to be approved by the state board of agriculture. The violation of such rules by any officer of the system shall be a misdemeanor. Cotton may be stored in such warehouses by any person owning cotton and receive all the benefits accruing from such state management; and the persons herein permitted to store cotton in said warehouses shall pay to the manager of the warehouse such sum for rent or storage as may be agreed upon by the owner and such person desiring to store cotton therein.

1919, c. 168, s. 10.

4917. Powers of superintendent; liability for tort. The superintendent shall also have the power to sue or to be sued in the courts of this state in his official capacity, but not as an individual, except in case of tort or neglect of duty, when the action shall be upon his bond. Suits may be brought in the county of Wake or in the county in which the cause of action arose.

1919, c. 168, s. 11.

4918. Requirements for storage; issuance and effect of receipt. The superintendent, when fully satisfied as to the title to the same, shall receive for storage lint cotton properly baled and having an inspection tag attached showing that it has been legally weighed and that a federal or state inspector has graded and stapled said cotton. Receipts of the form and design approved by the board of agriculture shall be issued for such cotton under the seal and in the name of the state of North Carolina, stating location of the warehouse, name of manager, the mark on said bale, weight, grade and length of staple, so as to be able to deliver on surrender of receipt the identical cotton for which it was given. The receipt for the cotton so stored is to be transferable by written assignment and actual delivery, and the cotton which it represents to be deliverable only upon a physical presentation of the receipt, which is to be marked "Canceled" when the cotton is taken from the warehouse. The said receipt carries absolute title to the cotton, it being the duty of the manager accepting same for storage, by inspection of the register of deeds' office, to ascertain whether there are on file crop mortgages or liens for rent or laborer's liens covering said cotton before he accepts same and issues a receipt. It shall be the duty of the register of deeds of the respective counties to furnish without charge from his records a certificate as to any liens and mortgages, upon the request of the warehouse superintendent or manager under him charged with the responsibility under this article. The official warehouse receipts shall contain a statement to be signed by the holder

as a part of his endorsement to the effect that there is no lien or mortgage outstanding against such cotton, and any person falsely signing such a statement shall be punished by imprisonment for not more than one year or by fine not exceeding ten times the market value of the cotton covered by said false statement.

1919, c. 168, s. 12.

4919. Issuance of false receipt a felony; punishment. The manager of any warehouse, or any agent, employee or servant, who issues or aids in issuing a receipt for cotton without knowing that such cotton has actually been placed in the warehouse under the control of the manager thereof shall be guilty of a felony, and upon conviction be punished for each offense by imprisonment in the state penitentiary for a period of not less than one nor more than five years, or by a fine not exceeding ten times the market value of cotton thus represented as having been stored.

1919, c. 168, s. 13.

4920. Failure to cancel receipt on delivery; punishment. Any manager, employee, agent or servant, who shall deliver cotton from a warehouse under this article without the production of the receipt therefor, or who fails to mark such receipt "Canceled" on the delivery of the cotton, shall, upon conviction, be punished by a fine of not more than ten thousand dollars or imprisonment for not more than five years, or by both fine and imprisonment, in the discretion of the court.

1919, c. 168, s. 14.

4921. Rules for issuance of duplicate receipt. The state warehouse superintendent, or his duly authorized agent, and the manager of the local warehouse is authorized to issue a duplicate receipt for a lost or destroyed receipt only upon affidavit of the owner of the original that the original receipt has been lost or destroyed and by giving the state warehouse superintendent bond with approved security in an amount equal to double the value of the cotton represented by the original receipt, said value to be estimated at the highest market price of middling cotton during the preceding two years, to indemnify the state warehouse superintendent from loss or damage and any cost of litigation.

1919, c. 168, s. 15.

4922. State not liable on warehouse debts; tax on cotton continued if losses sustained. No debt or other liability shall be created against the state by reason of the lease or operation of the warehouse system created by this article, or the storage of cotton therein, it being the purpose of this article to establish a self-sustaining system to operate as nearly as practicable at cost, without profit or loss to the state, except that expenses of supervision may be paid by the board of agriculture. While it is believed that the provisions and safeguards mentioned in this article, including the bonds required of all officers and the supplemental indemnifying or guarantee fund mentioned herein, will insure the security of the system beyond any reasonable possibility of loss, nevertheless, in order to establish the principle that this system should be supported by those for whose especial financial benefit it is established, it is hereby provided that

in the eventuality that the system should suffer at any time any loss not fully covered by the aforementioned bonds and indemnifying fund, such loss shall be made good by having the state tax commission repeat for another twelve months selected by it the special levy on ginned cotton, as prescribed in this article, and for the two years ending June thirtieth of the year one thousand nine hundred and twenty-one.

1919, c. 168, s. 16.

4923. Superintendent to insure cotton; premiums. The superintendent shall insure, and shall keep insured for its full value, upon the best terms obtainable, by individual or blanket policy, all cotton on storage. In case of loss he shall collect the insurance due and pay the same, ratably, to those lawfully entitled to it; insurance policies to be in the name of the state and the premium collected from the owners of the cotton, the state to have a lien on the cotton for insurance and storage charges as in the case of other public warehouses in the state.

1919, c. 168, s. 17.

4924. Superintendent to negotiate loans on receipts and sell cotton for owners. The state warehouse superintendent, in addition to the duties hereinbefore vested in him, is also permitted and empowered, upon the request of the owner of the warehouse receipts and cotton stored in such warehouses, to aid, assist, and cooperate, or as the duly authorized agent of such owner or owners, which authorization shall be in writing, to secure and negotiate loans upon the warehouse receipts. And upon like written request of the owner, and his or their duly authorized agent, he may sell and dispose of such warehouse cotton for such owner, either in the home or foreign markets, as may be agreed upon between such owner and the superintendent in writing. And for said loan or sales the superintendent shall charge reasonable and just commissions, without discrimination, all of which shall be accounted for and held as part of the fund for the maintenance of the state warehouse system: Provided, however, that the state incurs no liability whatever for any act or representation of the superintendent in exercising any of the permissions or powers vested in him in this section: Provided further, that the bond of the superintendent will be liable for any unfaithful or negligent act of his by reason of which the owner of such warehoused cotton suffer damage or loss.

1919, c. 168, s. 18.

4925. Partial unconstitutionality provided against. If any particular section or part of any section of this article shall be held to be unconstitutional, such holding shall not invalidate any other portion thereof.

1919, c. 168, s. 19.

ART. 19. LEAF TOBACCO SALES

4926. Accounts of warehouse sales required. On and after the first day of August, one thousand nine hundred and seven, the proprietor of each and every leaf tobacco warehouse doing business in this state shall keep a correct account of the number of pounds of leaf tobacco sold upon the floor of his warehouse daily.

1907, c. 97, s. 1.

4927. Monthly reports to commissioner; results classified. On or before the fifth day of each succeeding month the said warehouse proprietors shall make a statement, under oath, of all the tobacco so sold upon the floor of his warehouse during the past month and shall transmit the said statement, at once, to the commissioner of agriculture at Raleigh, North Carolina. The reports so made to the commissioner of agriculture shall be so arranged and classified as to show the number of pounds of tobacco sold for the producers of tobacco from first hand; the number of pounds sold for dealers; and the number of pounds resold by the proprietor of the warehouse for his own account or for the account of some other warehouse.

1907, c. 97, s. 2.

4928. Commissioner to keep record and publish in bulletin. The commissioner of agriculture shall cause said statements to be accurately copied into a book to be kept for this purpose, and shall keep separate and apart the statements returned to him from each leaf tobacco market in the state, so as to show the number of pounds of tobacco sold by each market for the sale of leaf tobacco; the number of pounds sold by producers, and the number of pounds resold upon each market. The commissioner of agriculture shall keep said books open to the inspection of the public, and shall, on or before the tenth day of each month, after the receipt of the reports above required to be made to him on or before the fifth day of each month, cause the said reports to be published in the bulletin issued by the agricultural department and in one or more journals published in the interest of the growth, sale, and manufacture of tobacco in the state, or having a large circulation therein.

1907, c. 97, s. 3.

4929. Penalty for failure to report sales. Any warehouse failing to make the report as required by section 4927 shall be subject to a penalty of twenty-five dollars and the costs in the case, to be recovered by any person suing for same in any court of a justice of the peace; and the magistrate in whose court the matter is adjudicated shall include in the cost of each case where the penalty is allowed one dollar, to be paid to the department of agriculture for expense of advertising.

1915, c. 31, s. 1.

4930. Commissioner to publish failure; certificate as evidence. The commissioner shall, on the 12th day of each month, publish in some newspaper the names of the tobacco warehouses that have failed to comply with this article.

The certificate of the commissioner under seal of the department shall be admissible as evidence the same as if it were deposition taken in form as provided by law.

1915, c. 31, ss. 2, 3.

ART. 20. BOYS' ROAD PATROL

4931. Boys' road patrol authorized. The board of agriculture is hereby charged with the duty of organizing a brigade of school boys in this state to be called the Boys' Road Patrol, and to be composed of boys who attend the rural public schools of the state.

1915, c. 239, s. 1.

4932. Duties of patrol. The duties of such patrol to be to look after the maintenance of the road lying near the home of each member of the patrol, dragging and ditching same by the use of machinery placed in the care of the patrol by the state and county in such manner as the board of agriculture shall direct.

1915, c. 239, s. 2.

4933. Regulations for patrol; prizes authorized. The board of agriculture is specially empowered and directed to devise, organize, and adopt all such rules and regulations as may be necessary for effectually carrying out the purposes of this article; may award suitable prizes and pay all expenses of successful competitors and others engaged in such work in attendance upon meetings and other purposes.

1915, c. 239, s. 3.

4934. Funds for support. All moneys for the carrying out of this article shall be provided by the counties themselves in coöperation with the department of agriculture. The commissioners of the counties of North Carolina are empowered to make annual donations out of the county funds for the purposes of this article.

1915, c. 239, ss. 4, 6.

4935. Minimum preliminary appropriation by county. Said brigade shall not be organized in any county until the commissioners of said county set apart and appropriate not less than one hundred dollars for the purposes of this article, to be spent in said county by the board of agriculture.

1915, c. 239, s. 5.

ART. 21. AGRICULTURAL SOCIETIES AND FAIRS

Part 1. North Carolina Agricultural Society

4936. Incorporation. The North Carolina Agricultural Society, as organized by a voluntary association on the eighth day of October, one thousand eight hundred and fifty-two, at the city of Raleigh, shall be incorporated under the name and style of The North Carolina Agricultural Society, and may take and hold real and personal estate to the value of fifty thousand dollars, and no more, for the purposes hereinafter specified.

Rev., s. 3863; Code, s. 2214; R. C., c. 2, s. 1; 1852, c. 1, ss. 1, 3.

4937. Officers; election and term. Such corporation shall annually elect a president, four vice-presidents, a treasurer, recording secretary, corresponding secretary, and such other officers as may be necessary; all of whom shall hold their offices until their successors are elected and qualified.

Rev., s. 3864; Code, s. 2215; R. C., c. 2, s. 2; 1852, c. 1, s. 2.

4938. By-laws. The corporation shall have power to make by-laws and regulations consistent with this chapter and the laws of the state, for its own government and for the due and orderly conduct and management of its affairs; and to rescind, alter, or modify any of the rules, articles of association, by-laws or ordinances which existed before such society was incorporated by the general

assembly, to the end that it may improve its organization and be empowered to adapt its operations to the great and useful purposes of its institution.

Rev., s. 3865; Code, s. 2216; 1860, c. 1; 1901, c. 2, s. 1.

4939. Annual fairs to be held. It shall be the duty of the corporation to provide a place for the holding of annual fairs, in order that the citizens may be encouraged by exhibitions, premiums, and other means to develop and improve the productions of agriculture, and every species of native industry; and to this end, and for these great and valuable purposes, and to no other, shall the corporation apply all the funds which by any means it may acquire.

Rev., s. 3866; Code, s. 2217; R. C., c. 2, s. 3.

4940. Appropriation from state; payment. 1. It shall be the duty of the state treasurer to pay to the treasurer of the corporation, on the first Monday of October during each year, out of any moneys not otherwise appropriated, the sum of fifteen hundred dollars, to be disposed of in the payment of premiums, as hereinafter directed: Provided, the treasurer of the corporation shall first produce a certificate from the president thereof showing that during the past twelve months the like sum has been raised by the corporation for the same purposes, and actually paid out for premiums, as provided in this section.

2. Or the corporation shall be paid a sum not to exceed fifteen hundred dollars, equal to the sum raised and paid out by it for such premiums.

3. Unless all games of chance shall be excluded from the grounds of the corporation the appropriation hereby made shall not be paid to it as herein directed.

4. The money hereby appropriated shall be applied, under the direction of the corporation, to the payment of premiums upon agricultural productions, implements of husbandry, and domestic animals, and to such other purposes as may, in the judgment of the corporation, be calculated to advance the interest of agriculture and manufactures.

Rev., s. 3867; Code, ss. 2218, 2219; R. C., c. 2, ss. 4, 5; 1854, c. 1; 1887, c. 409, s. 13.

Part 2. County Societies

4941. Incorporation; powers and term of existence. Any number of resident persons, not less than ten, may associate together in any county, under written articles of association, subscribed by the members thereof, and specifying the object of the association to encourage and promote agriculture, domestic manufactures, and the mechanic arts, under such name and style as they may choose, and thereby become a body corporate with all the powers incident to such a body, and may take and hold such property, both real and personal, not exceeding ten thousand dollars in value, as may be needful to promote the objects of their association.

The corporate existence shall continue as long as there are ten members, during the will and pleasure of the general assembly.

Rev., ss. 3868, 3869; Code, s. 2220; R. C., c. 2, ss. 6, 7; 1852, c. 2, ss. 1, 2, 3.

4942. Organization; officers; new members. Such society shall be organized by the appointment of a president, two vice-presidents, a secretary and treasurer, and such other officers as they may deem proper, who shall thereafter be chosen

annually, and hold their places until others shall be appointed. And the society may from time to time, on such conditions as may be prescribed, receive other members of the corporation.

Rev., s. 3869; Code, s. 2221; R. C., c. 2, s. 7; 1852, c. 2, s. 3.

4943. Appropriation from state; payment. When such society shall be fully organized, the organization thereof shall be certified by the president and signed by the secretary to the board of county commissioners, and thereupon the board shall order the same to be filed in the office of their clerk and there kept; and the clerk, under the seal of the board, shall certify a copy of the same, together with the order of the board, to the auditor of the state, who, if by the certificate it shall appear to him that such society has been duly organized, according to this title, and it shall likewise be made to appear to him by the certificate of the treasurer of such society, signed by the president and certified by the clerk of the board under the seal thereof, that the sum of one hundred dollars has been actually paid to the society by the members thereof, within one year preceding, for the sole benefit of such society, shall draw his warrant, and the treasurer shall pay to the treasurer of the society fifty dollars out of the public treasury for the like sole use and benefit; and such payment shall be annually made by the treasurer of the state on the terms and conditions set out in this chapter; but only one society for each county shall be entitled to the benefits of this chapter. The board of county commissioners, in case of a conflict between two claimants, shall determine which shall be the corporate body for the county.

Rev., s. 3870; Code, s. 2222; R. C., c. 2, s. 8; 1852, c. 2, ss. 3, 6; 1905, c. 513.

4944. Exhibits exempt from state and county taxes. All shows, attractions, and amusements authorized by said society to exhibit within the said fair grounds shall be excused of all state and county license tax or charge while so exhibiting: Provided, that all unchaste shows shall be excluded.

Rev., s. 3871; 1905, c. 513, s. 2.

4945. Funds to be used in paying premiums. All moneys so subscribed, as well as that received from the state treasury as herein provided, shall, after paying the necessary incidental expenses of such society, be annually paid for premiums awarded by such societies, in such sums and in such way and manner as they severally, under their by-laws, rules and regulations, shall direct, on such live animals, articles of production, and agricultural implements and tools, domestic manufactures, mechanical implements, tools and productions as are of the growth and manufacture of the county, and also such experiments, discoveries, or attainments in scientific or practical agriculture as are made within the county wherein such societies are respectively organized.

Rev., s. 3873; Code, s. 2223; R. C., c. 2, s. 9; 1852, c. 2, s. 7.

4946. Annual statements to state treasurer. Each agricultural society entitled to receive money from the state treasurer shall, through its treasurer, transmit to the treasurer of the state, in the month of December or before, a statement showing the money received from the state, the amount received from the members of the society for the preceding year, the expenditures of all such sums, and the number of the members of such society.

Rev., s. 3874; Code, s. 2224; R. C., c. 2, s. 10; 1852, c. 2, s. 8.

4947. Publication of statements required. Each agricultural society receiving money from the state under this chapter shall, in each year, publish at its own expense a full statement of its experiments and improvements, and reports of its committees, in at least one newspaper in the state; and evidence that the requirements of this chapter have been complied with shall be furnished to the state treasurer before he shall pay to such society the sum of fifty dollars for the benefit of such society for the next year.

Rev., s. 3875; Code, s. 2225; R. C., c. 2, s. 11; 1852, c. 2, s. 9.

4948. Records to be kept; may be read in evidence. The secretary of such society shall keep a fair record of its proceedings in a book provided for that purpose, which may be read in evidence in suits wherein the corporation may be a party.

Rev., s. 3876; Code, s. 2226; R. C., c. 2, s. 12; 1852, c. 2, s. 5.

4949. Albemarle agricultural and fish association; appropriation. Any number of resident persons in each of the following counties, namely, Currituck, Camden, Pasquotank, Perquimans, Gates, Chowan, Washington, Tyrrell, and Dare, may associate themselves together as provided in section 4941 under the name of the Albemarle Agricultural and Fish Association. When such association shall be fully organized, and the organization thereof certified by the president and signed by the secretary, the secretary under the seal of the association shall certify the same to the treasurer of the state, who, if by the certificate it shall appear to him that such association has been duly organized as herein provided, and if it shall be likewise made to appear to him by the certificate of the treasurer of the association, signed by the president, and certified by the secretary under the seal of the association, that the aggregate sum of the amounts herein required of each of such counties has been actually paid to the association by the members thereof, within one year preceding, for the sole benefit of the association, shall, upon warrant of the auditor, pay to the treasurer of such association an equal amount out of the public treasury as above provided for the like sole use and benefit, and such payments shall be annually made by the treasurer of the state on the terms and in the manner herein specified.

Rev., s. 3872; 1901, c. 141.

Part 3. Protection and Regulation of Fairs

4950. Lien against licensees' property to secure charge. All agricultural fairs which shall grant any privilege, license, or concession to any person, persons, firm, or corporation for vending wares or merchandise within any fair grounds, or which shall rent any ground space for carrying on any kind of business in such fair grounds, either upon stipulated price or for a certain per cent of the receipts taken in by such person, persons, firm, or corporation, shall have the right to retain possession of and shall have a lien upon any or all the goods, wares, fixtures, and merchandise or other property of such person, persons, firm, or corporation until all charges for privileges, licenses, or concessions are paid, or until their contract is fully complied with.

1915, c. 242, s. 1.

4951. Notice of sale to owner. Written notice of such sale shall be served on the owner of such goods, wares, merchandise, or fixtures or other property ten days before such sale, if he or it be a resident of the state, but if a nonresident of the state, or his or its residence be unknown, the publication of such notice for ten days at the courthouse door and three other public places in the county shall be sufficient service of the same.

1915, c. 242, s. 2.

4952. Unlawful entry on grounds a misdemeanor. If any person, after having been expelled from the fair grounds of any agricultural or horticultural society, shall offer to enter the same again without permission from such society; or if any person shall break over the enclosing structure of said fair grounds and enter the same, or shall enter the enclosure of said fair grounds by means of climbing over, under or through the enclosing structure surrounding the same, or shall enter the enclosure through the gates without the permission of its gatekeeper or the proper officer of said fair association, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days.

Rev., s. 3669; Code, s. 2795; 1901, c. 291; 1870-1, c. 184, s. 3.

4953. Assisting unlawful entry on grounds a misdemeanor. It shall be unlawful for any person or persons to assist any other person or persons to enter upon the grounds of any fair association when an admission fee is charged, by assisting such other person or persons to climb over or go under the fence or by pulling off a plank or to enter the enclosed grounds by any trick or device or by passing out a ticket or pass or in any other way. Any violation of this section shall be a misdemeanor and punishable by a fine not exceeding twenty dollars or imprisonment not exceeding ten days.

1915, c. 242, ss. 3, 4.

4954. Venders and exhibitors near fairs to pay license. Every person, firm, officer, or agent of any corporation who shall temporarily expose for sale any goods, wares, foods, soft drinks, ice cream, fruits, novelties, or any other kind of merchandise, or who shall operate any merry-go-round, ferris wheel, or any other device for public amusement, within one-fourth of a mile of any agricultural fair during such fair, shall pay a tax of one hundred dollars in each county in which he shall carry on such business, whether as a principal or agent: Provided, this section shall not apply to any business established sixty days prior to the beginning of such fair.

1915, c. 242, s. 5.

4955. Application for license to county commissioners. Every such person mentioned in the preceding section shall apply in advance for a license to the board of county commissioners of the county in which he proposes to peddle, sell, or operate, and the board of county commissioners may in their discretion issue license upon the payment of the tax to the sheriff, which shall expire at the end of twelve months from its date.

1915, c. 242, s. 6.

4956. Unlicensed vending, etc., near fairs a misdemeanor. Any person violating the provisions of the two preceding sections shall be guilty of a misdemeanor, punishable by a fine not to exceed fifty dollars or imprisonment not to exceed thirty days, at the discretion of the court.

1915, c. 242, s. 7.

4957. Commissioners may refuse to license shows within five miles. The county commissioners of any county in North Carolina in which there is a regularly organized agricultural fair may refuse to allow any circus, menagerie, wild west show, dog and pony show, carnival show, to exhibit within five miles of such fair from its beginning to its ending: Provided, that notice is given the sheriff by the commissioners of said county not to issue such license to said entertainments sixty days prior to the date of such exhibition.

1913, c. 163, s. 1.

4958. Local aid to agricultural, animal, and poultry exhibits. Any city, town, or county may appropriate not to exceed one hundred dollars to aid any agricultural, animal, or poultry exhibition held within such city, town, or county.

1919, c. 135.

For fraudulent entries at fairs, see section 4289.

CHAPTER 85

AGRICULTURAL DEVELOPMENT DISTRICTS

SEC.

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4959. Clerk's power to establish; public use. The clerk of the superior court (hereinafter called the "clerk" of "the court") of any county of the state of North Carolina shall have jurisdiction, power, and authority to establish agricultural development districts in his county for the purpose of clearing and putting in suitable condition for the beginning of cultivation good grades of lands, forested or cut-over, suitable for agriculture, and it is hereby declared that the said development shall be considered a public benefit and conducive to the public welfare.

1917, c. 131, s. 1.

4960. Landowners' petition and deposits. Whenever a petition signed by all the landowners in a proposed agricultural development district shall be filed in the office of the clerk of the superior court of any county in which a part of said lands is located, setting forth and certifying the following:

1. That it is their desire and intention to form an agricultural development district (hereinafter called "the district") of an area aggregating not less than one thousand acres, and that it is their purpose, when cleared and put into condition for cultivation, to sell the said land to settlers on long time and at reasonable prices.

2. They shall deposit with the clerk—

a. A certified check for not less than one thousand dollars, plus ten cents per acre for each additional acre in the proposed district, from which funds the clerk shall from time to time meet the actual expenses of examining and verifying and other expenses incidental to forming the district.

b. A complete map of the lands to be included in the district.

c. A soil map showing the types of soils.

d. A drainage map showing the natural drainage of the lands, and any proposed system of drainage it is intended to establish.

e. Certificates of title by a reputable attorney of the county.

f. An estimate of the cost of improvements under the plan submitted.

g. A certificate that the lands when improved will have a market value of at least twice the amount of the total cost of the proposed improvement.

1917, c. 131, s. 2.

4961. Viewers' appointment. The clerk shall then appoint a board of viewers (hereinafter called "the viewers"), composed of three members, one a competent civil engineer and the other two practical agriculturists, to examine the lands and data submitted to the clerk by the landowners, and report as to the facts being virtually as stated, or to give their opinion as to any variations.

1917, c. 131, s. 2.

4962. Viewers' report. Their written report shall be filed within two weeks from the date of their appointment. The clerk shall consider this report. If the viewers report that the project is not practicable or will not be for the public welfare, and the clerk shall approve such findings, the petition shall be dismissed at the cost of the petitioners.

1917, c. 131, s. 2.

4963. Plan submitted to state geologist. If the viewers report that the project is practicable, and that it will be for the public welfare and conducive to the general welfare of the community, and the court shall so find, then all of the data and reports of the proceedings shall be submitted to the state geologist, who shall designate:

1. An engineer to survey and approve of the boundaries and drainage and road plans.

2. An attorney of reputation to examine and approve of the chains of title submitted.

3. A forester to make an estimate of the cost of clearing.

4. A soil expert to report on the availability of the land for agricultural purposes.

1917, c. 131, s. 3.

4964. District established, if geologist approves. The state geologist shall consider these reports, data, and plans, and, if he approves the same, shall so certify to the clerk of the court, who shall then declare the district established.

1917, c. 131, s. 3.

4965. Board of agricultural development commissioners appointed. After the said district shall have been declared established as aforesaid, and the complete

plans therefor approved, the clerk shall appoint two persons, one of whom shall be a landowner of the district, the other a practical agriculturist of good character, not a landowner of the district, and these two shall choose a third, who may or may not be a landowner of the district, and the three so appointed and chosen shall be designated as the Board of Agricultural Development Commissioners of District.

1917, c. 131, s. 4.

4966. Commissioners incorporated; powers; officers; superintendent's bond. Such commissioners when so appointed and chosen shall be immediately created a body corporate under the name and style of the Board of Agricultural Development Commissioners of District (hereinafter called "the commissioners" or "the board of commissioners"), with the right to hold property and convey the same, to sue and be sued, and shall possess such other powers as usually pertain to corporations. They shall organize by electing from among their number a chairman and vice-chairman. They shall also elect a secretary, within or without their body, and shall adopt by-laws for the government of their proceedings. The treasurer of the county in which the proceedings are instituted shall be ex officio treasurer of such board of commissioners. Such board of commissioners shall adopt a seal, which it may alter at pleasure. They shall have and possess such powers as are herein granted. The name of such district shall constitute a part of its corporate name. The commissioners shall appoint a competent person as superintendent of construction; such person shall furnish a bond, to be approved by the commissioners, in the penal sum of ten thousand dollars, conditioned upon the honest and faithful performance of his duties. Such bond shall be in favor of the board of commissioners. In the event of any vacancy in the membership of the board of commissioners the remaining members shall fill such vacancy, subject to the approval of the court.

1917, c. 131, s. 4.

4967. Classification of lands according to benefits. It shall be the further duty of the viewers to personally examine the lands in the district and classify them with reference to the benefits they will receive from the improvements to be made. The land benefits shall be separated into five classes. The land receiving the highest benefit shall be marked Class A; that receiving the next highest benefit, Class B; that receiving the next highest benefit, Class C; that receiving the next highest benefit, Class D; and that receiving the smallest benefit, Class E. The holdings of any one landowner need not necessarily be all in one class, but the number of acres in each class shall be ascertained, though its boundary need not be marked on the ground or shown on the map. The total number of acres owned by one person in each class and the total number of acres benefited shall be determined, and the total number of acres in each class in the entire district shall be ascertained and presented in tabulated form. The scale of assessment upon the several classes of land returned by the viewers shall be in the ratio of five, four, three, two, and one; that is to say, as often as five cents per acre is assessed against the land in Class A, four cents per acre shall be assessed against

the land in Class B, and three cents per acre in Class C, and two cents per acre in Class D, and one cent per acre in Class E. This shall form the basis of assessment for benefits to the lands of the district.

1917, c. 131, s. 5.

4968. Appeal from viewers' report. Any party aggrieved may, within ten days after the confirmation of the viewers' report, appeal to the superior court in term-time. Such an appeal shall be taken and prosecuted as now provided in special proceedings. Such an appeal shall be based and heard only upon such exceptions theretofore filed by the complaining party, either as to issue of law or fact, and no additional exceptions shall be considered by the court upon the hearing of the appeal.

1917, c. 131, s. 6.

4969. Letting contract for construction. The commissioners shall cause notice to be given for two consecutive weeks in some newspaper published in the county wherein said district is located, and such additional publication elsewhere as they deem expedient, of time and place of letting the work of construction, and in such notice they shall specify the approximate amount of work to be done, the time fixed for the completion thereof, and the date appointed for the letting. They, together with the superintendent of the district, shall convene and let to the lowest responsible bidder, either as a whole or in part, or in sections, as they deem most advantageous for the district, the proposed work. The landowners may bid on the work, and in the event of their securing the contract, the work shall be done at actual cost, it being distinctly understood that the landowners are to receive no profit from said contract, and any saving effected shall inure to the benefit of the district. No bids shall be entertained that exceed the estimated cost, except for good and satisfactory reasons it shall be shown that the original estimate was erroneous. The commissioners shall have the right to reject all bids and advertise again the work, if in their judgment the interest of the district will be subserved by so doing. The successful bidder shall be required to enter into a contract with the board of commissioners, and to execute a bond for the faithful performance of such contract, with sufficient surety, in favor of the board of commissioners for the use and benefit of the district, in an amount equal to twenty-five per centum of the estimated cost of the work awarded to him. In canvassing bids and letting the contract the superintendent of construction shall act only in an advisory capacity to the board of commissioners. The contract shall be based on the plans and specifications submitted by the commissioners in a report, and confirmed by the court, the original of which shall remain on file in the office of the clerk and shall be open to the inspection of all prospective bidders. All bids shall be sealed and shall not be opened except under authority of the commissioners, and on the date therefor appointed for the opening of bids. All bids must be accompanied by a certified check for three per centum of the amount of the bid.

1917, c. 131, s. 7.

4970. Payment for work done. The superintendent of construction shall make monthly estimates of the amount of work done and shall furnish one copy to the contractor and file the other with the secretary of the board of commissioners,

and the commissioners shall within five days after filing of such estimate meet and direct the secretary to draw a warrant in favor of the contractor for ninety per centum of the work done according to the specifications and contract; and upon the presentation of such, properly signed by the chairman or vice-chairman and secretary, to the treasurer of the district, he shall pay the amount due thereon. When the work is fully completed and accepted by the superintendent, he shall make an estimate for the whole amount due, including the amounts withheld on the previous monthly estimates, which shall be paid from the fund as before provided. In the event that the landowners receive the contract, the monthly payments shall cover only the actual cost of the work, as certified by the superintendent of construction, to whose certificates shall be attached all pay rolls and vouchers. If any contractor to whom said work shall have been let shall fail to perform the same according to the terms specified in his contract, action may be had in behalf of the commissioners against such contractor and his bond in the superior court, for damages sustained in the district, and recovery made against such contractor and his sureties. In such an event the work shall be advertised and relet in the same manner as the original letting.

1917, c. 131, s. 8.

4971. Record book kept by clerk. The clerk shall provide a suitable book to be known as the Record Book of the Agricultural Development Commissioners of District, in which he shall cause to be recorded every petition, motion, order, record, judgment, or finding of the board of commissioners in every transaction which may come before it, in such a way as to make a complete and continuous record of the case; copies of all the maps and plans are to be furnished by the commissioners, and marked by the clerk "Official Copy," which shall be kept on file by him in his office, and one of the copies shall be pasted or otherwise attached to his record.

1917, c. 131, s. 9.

4972. Assessment rolls; preparation; contents; execution. After the classification of the land and ratios of assessment of the different classes to be made thereon has been confirmed by the court, the commissioners shall ascertain the total cost of improvement, including all incidental expenses, and shall certify under the hand of the chairman and secretary of the board of commissioners to the clerk the said total cost, and said certificate shall be forthwith recorded in the record book and open to the inspection of any landowner in the district. The commissioners shall immediately prepare in duplicate the assessment rolls or agricultural improvement tax lists, giving therein the names of the owners of the land in the district as ascertained from the public records, a brief description of the several tracts of land assessed, and the assessment against each tract of land. The first of these assessment rolls shall provide assessments sufficient for the payment of interest on the bond issue to accrue the third year after their issue and the installment of principal to fall due at the expiration of the third year after the date of issue, together with such amounts as shall have to be paid for the collection and handling of the same. The second assessment roll shall make like provision for the fourth year, and in like manner assessment rolls shall make provision for each succeeding year during the life of the bonds. Each of the said assessment rolls shall specify the time when collectible, and shall be numbered

in their order, and the amounts assessed against the several tracts of land shall be in accordance with the benefits received, as shown by the classification and ratio of the assessment made by the viewers. These assessment rolls shall be signed by the clerk and by the secretary of the board of commissioners.

1917, c. 131, s. 10.

4973. Filing and collection of assessment rolls; to be lien on land. One copy of each of said assessment rolls shall be filed in the record book and one copy shall be delivered to the sheriff or other county tax collector, after the clerk has appended thereto an order directing the collection of said assessment, and the said assessment shall thereupon have the force and effect of a judgment as in the case of state and county taxes. These assessments shall constitute a first and paramount lien, second only to state and county taxes, upon the lands assessed for the payment of the bonds and interest thereon as they become due, and shall be collected in the same manner, by the same officers, as the state and county taxes are collected.

1917, c. 131, s. 10.

4974. When assessments due; sale of delinquent lands. The said assessments shall be due and payable on the first Monday in September each year, and if the same shall not be paid in full by the thirty-first day of December following, it shall be the duty of the sheriff to sell the land or lands so delinquent. The sale of lands for failure to pay such assessments shall be made at the courthouse door in the county in which the lands are located, between the hours of ten o'clock in the forenoon and four o'clock in the afternoon, on the first Monday of February of each year; and if for any necessary cause the sale cannot be made on that date, the sale may be continued from day to day for not exceeding four days, or the land may be readvertised and sold on the first Monday in March succeeding, during the same hours, without any order therefor. In all other respects, except as to the time of the sale of the land, the existing laws as to the collection of state and county taxes shall have application to the collection of assessments under this article.

1917, c. 131, s. 10.

4975. Settlement by tax collector. It shall be the duty of the sheriff or tax collector to pay over to the county treasurer promptly the moneys so collected by him upon said tax assessments, to the end that the said treasurer may have funds in hand to meet the payment of interest and principal due upon outstanding bonds as they mature.

1917, c. 131, s. 10.

4976. Payment of interest and installments on bonds; county treasurer's liability. It shall be the duty of the county treasurer, and without any previous order from the commissioners, to provide and pay the installments of interest at the time and place as evidenced by the coupons attached to said bonds, and also to pay the annual installments of principal due on said bonds at the time and place as evidenced by said bonds; and the said county treasurer shall be guilty of a misdemeanor and subject, on conviction, to fine and imprisonment, in the discretion of the court, if he shall neglect or fail to make prompt payment

of said interest and principal of said bonds, and shall likewise be liable in a civil action for all damages which may accrue to the board of commissioners or holders of said bonds, to either or both of which a right of action is hereby given.

1917, c. 131, s. 10.

4977. New assessment on sale of land. When any land in the district is sold the court shall assess the new owner thereof, and deduct the amount of the new assessment from the assessment of the former owner, and correct the assessment rolls accordingly.

1917, c. 131, s. 10.

4978. Advertisement of intention to issue bonds. The commissioners shall give notice for three weeks, by publication in some newspaper published in the county in which the district or a part of the district is situated, and shall also post a written or printed notice at the door of the courthouse and at five conspicuous places in the district, reciting that they propose to issue bonds for the payment of the total cost of improvement, giving the amount of the bonds to be issued, the rate of interest they are to bear, and the time when payable. Any landowner in the district not wanting to pay interest on the bonds may within fifteen days after the publication of said notice pay to the county treasurer the full amount for which his land is liable, to be assessed from the classification sheet and certificate of the board of commissioners, showing the total cost of improvements, and have his lands released from liability to be assessed for such improvements.

1917, c. 131, s. 11.

4979. Landowner's waiver. Each and every person owning land in the district who shall fail to pay to the county treasurer the full amount for which his land is liable as aforesaid, within the time above specified, shall be deemed as consenting to the issuance of the bonds, and in consideration of the right to pay his proportion in installments, he hereby waives his right of defense to the payment of any assessment which may be levied for the payment of the bonds because of any irregularity or defect in the proceedings prior to this time, except in the case of an appeal as hereinbefore provided, which is not affected by this waiver.

1917, c. 131, s. 12.

4980. Bond issue. At the expiration of fifteen days after the expiration of the notice of the bond issue, the board of commissioners may issue bonds of the district for an amount equal to the total estimated cost of the improvements, less such amounts as shall have been paid in in cash to the county treasurer, plus an amount sufficient to pay interest on the bond issue for the three years next following the date of the issue: Provided, that the total principal amount of the bonds to be issued shall not exceed fifty dollars per acre for the land to be improved.

These bonds shall bear six per cent interest per annum, payable semiannually, and shall be paid in twenty equal installments. The first installment of the principal shall mature at the expiration of three years from the date of issue, and one installment for each succeeding year for nineteen additional years. The commissioners shall sell these bonds at not less than par and apply the proceeds to the payment of interest on said bonds for the three years next following the

date of issue, and the payment of other expenses of the district provided for in this chapter. The proceeds from such bonds shall be for the exclusive use of the district specified on their face. The bonds shall be numbered by the board of commissioners and recorded in the record book, which record shall set out specifically the lands embraced in the district on which the tax has not been paid in full, which land is to be assessed as hereinbefore provided. If any installment of principal or interest represented by said bonds shall not be paid at the time and in the manner when the same shall be due and payable, and such default shall continue for a period of six months, the holder or holders of such bond or bonds upon which default has been made shall have a right of action against said district, or the board of commissioners of said district, wherein the court may issue a writ of mandamus against said district, its officers, including the tax collector and treasurer, directing the levying of a tax or specific assessment as herein provided and the collection of the same in such sum as may be necessary to meet any unpaid installment of principal and interest and the cost of said action; and such other remedies are hereby vested in the holder or holders of such bond or bonds in default as may be authorized by law; and the right of action is hereby vested in the holder or holders of such bond or bonds upon which default has been made authorizing them to institute suit against any officer on his official bond for failure to perform any duty imposed by the provisions of this chapter. The official bonds of the tax collector and the county treasurer shall be liable for the faithful performance of the duties herein assigned them. Such official bonds may be increased by the board of county commissioners.

1917, c. 131, s. 13.

4981. Fees allowed sheriff and treasurer. The fee allowed the sheriff or the tax collector for collecting the tax as prescribed in this chapter shall be two per centum of the amount collected, and the fee allowed the county treasurer for disbursing the revenue obtained from the sale of the bonds shall be one per centum of the amount disbursed: Provided, no fee shall be allowed to sheriff or other tax collector, or to the county treasurer, for collecting or receiving the revenue obtained from the sale of said bonds, nor for disbursing the revenue raised for paying off said bonds: Provided further, that in those counties where the sheriff, tax collector, and treasurer are on a salary basis, no fee whatever shall be allowed for collecting or disbursing the funds of the district.

1917, c. 131, s. 13 (2d).

4982. Fees and expenses under chapter. Any engineer employed under the provisions of this chapter shall receive such compensation for his services as shall be fixed and determined by the commissioners. The viewers, other than the engineer, shall receive five dollars per day; the rodman, axeman, chainman, and other laborers shall receive not to exceed two dollars per day. All other fees and costs incurred under the provisions of this chapter shall be the same as are usual for like services in other cases. Said costs and expenses shall be paid, by order of the court, out of the funds provided for that purpose, and the board of commissioners shall issue warrants therefor when funds shall be in the hands of the

treasurer. Any engineer, viewer, superintendent of construction, or other person appointed under this chapter may be removed by the court, upon petition, for corruption, neglect of duty, or other good and satisfactory cause shown.

1917, c. 131, s. 14.

4983. Liberal construction; defects in proceeding. The provisions of this chapter shall be liberally construed to promote the objects herein declared and for the general welfare of the state. The collection of assessments shall not be defeated, whether proper notices have been given, by reason of any defect in the proceedings occurring prior to the order of the court confirming the final report of the commissioners; but such orders shall be conclusive and final that all prior proceedings were regular and according to law, unless they were appealed from. If on appeal the court shall deem it just and proper to release any person, or modify his assessment or liability, it shall in no manner affect the rights and legality of any other person than the appellant, and the failure to appeal from the order of the court within the time specified shall be a waiver of any illegality in the proceedings, and the remedies provided for in this chapter shall exclude all other remedies.

1917, c. 131, s. 15.

4984. Statutes repealed; saving clause. All laws in conflict with this chapter are hereby repealed: Provided, that proceedings now pending by virtue of any statute now or hereafter in force in this state or in any county shall not be affected by this chapter, but that such proceedings may be continued in accordance with such statute, or in accordance with the provisions of this chapter.

1917, c. 131, s. 16.

CHAPTER 86

ARCHITECTS

SEC.

- 4985. Architecture defined.
- 4986. State board of architectural examination and registration; creation; membership; vacancies.
- 4987. Oath of members.
- 4988. Organization of board; officers; treasurer's bond.
- 4989. Seal of board.
- 4990. Meeting of board; quorum.
- 4991. Record of proceedings and of registration.
- 4992. Examination and certificate of applicant.
- 4993. Refusal, revocation, or suspension of certificate.
- 4994. Examination fees; expenses of board.
- 4995. Annual renewal of certificate; fee.
- 4996. Holding out as architect without having certificate; provisos.
- 4997. Seal of registered architect; plans to bear seal.
- 4998. County record of registered architects; fees.

4985. Architecture defined. For the purpose of this chapter, architecture is defined to be the art of designing for the safe and sanitary construction of buildings for public and private use, as taught by the various colleges of architecture recognized by the American Institute of Architects.

1915, c. 270, s. 9.

4986. State board of architectural examination and registration; creation; membership; vacancies. There shall be a state board of architectural examination and registration, consisting of five members, to be appointed by the governor in the following manner, to wit: Within thirty days after the ninth day of March, one thousand nine hundred and fifteen, the governor shall appoint five persons who are reputable architects residing in the state of North Carolina, who have been engaged in the practice of architecture at least ten years. The five persons so appointed by the governor shall constitute the board of architectural examination and registration, and they shall be appointed for one, two, three, four, and five years, respectively. Thereafter, in each year, the governor in like manner shall appoint one licensed architect to fill the vacancy caused by the expiration of the term of office, the term of such new members to be for five years. If vacancy shall occur in the board for any cause, the same shall be filled by the appointment of the governor.

1915, c. 270, s. 1.

4987. Oath of members. Each member of the state board of architectural examination and registration shall, before entering upon the discharge of the duties of his office, take and file with the secretary of state an oath in writing to properly perform the duties of his office as a member of said board, and to uphold the constitution of North Carolina and the constitution of the United States.

1915, c. 270, s. 2.

4988. Organization of board; officers; treasurer's bond. The said board shall, within thirty days after its appointment by the governor, meet in the city of Raleigh, at a time and place to be designated by the governor, and organize by

electing a president, vice-president, secretary, and treasurer, each to serve for one year. Said board shall have power to make such by-laws, rules, and regulations as it shall deem best, provided the same are not in conflict with the laws of North Carolina. The treasurer shall give bond in such sum as the board shall determine, with such security as shall be approved by the board, said bond to be conditioned for the faithful performance of the duties of his office and for the faithful accounting of all moneys and other property as shall come into his hands.

1915, c. 270, s. 1.

4989. Seal of board. The board shall adopt a seal for its own use. The seal shall have the words "Board of Architectural Examination and Registration, State of North Carolina," and the secretary shall have charge, care, and custody thereof.

1915, c. 270, s. 5.

4990. Meeting of board; quorum. The board shall meet once a year in July of each succeeding year, for the purpose of electing officers and transacting such other business as may properly come before it. Due notice of such annual meeting, and the time and place thereof, shall be given to each member by letter, sent to his last postoffice address at least ten days before the meetings, and thirty days notice of such annual meeting shall be given in some newspaper published in the city of Raleigh, at least once a week for four weeks preceding such meeting. Three members of the board shall constitute a quorum.

1915, c. 270, s. 1.

4991. Record of proceedings and of registration. The secretary shall keep a record of the proceedings of the board and registration for all applicants for registration and admission to practice architecture, giving the name and location of the institution or place of training where the applicant was prepared for the practice of architecture, and such other information as the board may deem proper and useful. This registration shall be prima facie evidence of all matters recorded therein.

1915, c. 270, s. 1.

4992. Examination and certificate of applicant. Any person hereafter desiring to be registered and admitted to the practice of architecture in the state shall make a written application for examination to the board of architectural examination and registration, on a form prescribed by the board, giving his name, age (which shall not be less than twenty-one years), his residence, and such evidence of his qualification and proficiency as may be prescribed by said board, which application shall be accompanied by twenty-five dollars. If said application is satisfactory to the board, then the applicant shall be entitled to an examination to determine his qualifications. If the result of the examination of any applicant shall be satisfactory to the board, then the board shall issue to the applicant a certificate to practice architecture in North Carolina. Any person failing to pass such examination may be reexamined at any regular meeting of the board without additional fee.

1915, c. 270, s. 3; 1919, c. 336, s. 1.

4993. Refusal, revocation, or suspension of certificates. Said board may refuse to grant certificate to any person convicted of a felony, or who, in the opinion of the board, has been guilty of gross, unprofessional conduct, or who is addicted to habits of such character as to render him unfit to practice architecture. The board of architectural examination and registration may suspend for a period or revoke the certificate of admission to practice, and forbid practice by any architect upon conviction, after a fair and impartial trial, of any dishonest practice, unprofessional conduct, or incompetence. For the purpose of such trial, the board shall have full power to subpoena and examine witnesses under oath as to the facts of the case. Any architect against whom charges are preferred shall have not less than sixty days notice before the trial of his case, and shall have the right to have witnesses subpoenaed in his behalf, and of being heard in person and by counsel. Any such trial shall be open to the public: Provided, that a notice and copy of this chapter shall be mailed by the secretary of the state board of architectural examination and registration to each architect in and out of the state to whom a certificate has been issued under this chapter.

1915, c. 270, s. 5; 1919, c. 336, s. 3.

4994. Examination fees; expenses of board. All examination fees shall be paid in advance to the treasurer of said board of architectural examination and registration. The state of North Carolina shall not be liable for the compensation of any members or officers of said board. All expenses incurred by said board in the necessary discharge of their duties shall be paid out of funds derived from examination fees herein provided for, and shall be paid by the treasurer upon warrant drawn by the secretary and approved by the president. The said board shall have the power to determine what are necessary expenses and to fix the salaries of the respective officers.

1915, c. 270, s. 6.

4995. Annual renewal of certificate; fee. Every architect continuing his practice in the state shall, on or before the first day of July in each year, obtain from the board of architectural examination and registration a renewal of his certificate for the ensuing year upon the payment of a fee of five dollars, and upon failure to do so shall have his certificate of admission to practice revoked, but such certificate may be renewed at any time within one year upon the payment of a fee of ten dollars.

1919, c. 336, s. 2.

4996. Holding out as architect without having certificate, provisos. Any person not registered under this chapter who shall advertise or put up a sign or card or other device, or in any other way hold himself out to the public as an architect, shall be guilty of a misdemeanor and punished by a fine not exceeding fifty dollars: Provided, however, that nothing herein shall prevent any person from making plans or data for buildings for themselves or other persons, if the person so furnishing such plans or data shall not hold himself out as an architect; and Provided further, that nothing in this chapter shall prevent the procuring of plans and specifications from an architect residing outside of this state. Non-resident architects who come within the state to do business shall be subject to the

same examination and upon the same terms and conditions as resident applicants, unless such nonresident architects are permitted to engage in business in this state under the terms of the preceding section.

1915, c. 270, s. 4.

4997. Seal of registered architect; plans to bear seal. Every architect who shall have obtained from said board a certificate, shall have a seal which must contain the name of the architect, his place of business, and the words "Registered Architect, of North Carolina," and he shall stamp all drawings and specifications issued from his office, for use in this state, with an impression of said seal.

1915, c. 270, s. 7.

4998. County record of registered architects; fees. Every person holding a certificate of said board to practice architecture shall have said certificate recorded in the office of the clerk of the superior court of the county in which he resides or has his principal office. Said clerk shall record the same in a book to be kept by him, entitled "Record of Architecture," and the clerk shall be entitled to a fee of one dollar for recording such certificate: Provided, however, that in any counties where the clerk is on a salary and not on a fee basis, then the said fee of one dollar shall be paid into the county treasury. It shall be unlawful for any person to hold himself out as an architect until said certificate shall have been recorded, and any person found guilty of holding himself out as an architect without registration of his certificate, as aforesaid, shall be guilty of a misdemeanor, and fined not more than fifty dollars, in the discretion of the court.

1915, c. 270, s. 8.

CHAPTER 87

AUCTIONEERS

SEC.

- 4999. Application of chapter.
- 5000. Appointment; bond.
- 5001. Account semiannually; pay over moneys received.
- 5002. Acting without appointment; penalty.
- 5003. Commissions; 1 per cent to town.

4999. Application of chapter. The provisions of this chapter extend only to sales of such articles of goods, wares, and merchandise as are the ordinary subject of traffic and sale by merchants and traders.

This chapter does not affect any sale (1) by auction of goods, wares, and merchandise made pursuant to and in execution of any order, decree, or judgment of the courts of the United States or of this state; or (2) made in consequence of any assignment of property and estate for benefit of creditors; or (3) made by executors, administrators, collectors, or guardians; or (4) made pursuant to any law touching the collection of any tax or duty, or sale of any wrecked goods; or (5) extend to any article the product of the agriculture of this state, in its natural or unmanufactured state; or (6) to any species of stock or domestic animals; or (7) to any article of household furniture or farming utensils which have been in use.

Rev., s. 220; Code, s. 2284; R. C., c. 10, s. 6.

Auctioneer is agent for the buyer and seller, and may bind them in writing under the statute of frauds: *Woodruff v. Trust Co.*, 173-546; *Love v. Harris*, 156-88; *Dickerson v. Simmons*, 141-325; *Proctor v. Finley*, 119-536; *Mayer v. Adrian*, 77-83; *Gwathmey v. Cason*, 74-5; *Cherry v. Long*, 61-466. **Liability on bond for money not turned over to employer under prior statutes:** *Comrs. v. Holloway*, 10-234.

5000. Appointment; bond. Any citizen of the state desiring to conduct the business of an auctioneer may apply to the board of county commissioners of the county in which he proposes to carry on such business, and, upon his giving bond payable to the state of North Carolina, to be approved by said commissioners or other authority, conditioned that he will perform faithfully all the duties required of auctioneers, the sheriff shall issue to him a license to act as an auctioneer in said county for twelve months from the date of the license. The bond shall in no case be less than five hundred dollars, and if the applicant reside in an incorporated town or city having not less than thirty-five hundred nor more than five thousand inhabitants, said bond shall be one thousand dollars, and one thousand dollars additional for every additional five thousand inhabitants or fraction thereof amounting to thirty-five hundred and above.

Rev., s. 217; Code, s. 2281; 1889, c. 40; 1891, c. 576; R. C., c. 10, s. 1.

5001. Account semiannually; pay over moneys received. It is the duty of such auctioneers, on the first days respectively of October and April, to render to the clerks of the superior court of their respective counties a true and particular account in writing of all the moneys made liable to duty by law, for which any goods, wares, or merchandise may have been sold at auction, and also at private sale, where the price of the goods, wares, and merchandise sold at private sale was fixed or agreed upon or governed by any previous sale at auction of any

goods, wares, and merchandise of the same kind; which account shall contain a statement of the gross amount of sales by them made for each particular person or company at one time, the date of each sale, the names of the owners of the goods, wares, and merchandise sold, and the amount of the tax due thereon, which tax they shall pay as directed by law. The statement shall be subscribed by them and sworn to before the clerk of the said court, who is hereby authorized to administer the oath. And it is their further duty to account with and pay to the person entitled thereto the moneys received on the sales by them made.

Rev., s. 218; Code, s. 2282; R. C., c. 10, s. 2.

5002. Acting without appointment; penalty. No person shall exercise the trade or business of an auctioneer by selling any goods, wares, or merchandise by auction or by any other mode of sale whereby the best or highest bidder is deemed to be the purchaser, unless such person is appointed an auctioneer pursuant to this chapter, on pain of forfeiting to the state for every such sale the sum of two hundred dollars, which shall be prosecuted to recovery by the solicitor of the district.

Rev., s. 219; Code, s. 2283; R. C., c. 10, s. 5.

5003. Commissions; one per cent to town. Auctioneers are entitled to such compensation as may be agreed upon, not exceeding two and a half per cent on the amount of sales; and auctioneers of incorporated towns shall retain and pay one per cent of the gross amount of sales to the commissioners or other authority of their respective towns.

Rev., s. 221; Code, s. 2285; R. C., c. 10, s. 7.

Trustee must pay auctioneer out of his commissions: *Duffy v. Smith*, 132-38.

CHAPTER 88

BOARDS OF CHARITIES

ART. 1. STATE BOARD OF CHARITIES AND PUBLIC WELFARE.

- 5004. Election and term of office.
- 5005. Meetings of board.
- 5006. Powers and duties of board.
- 5007. Investigate and report on mental and physical infirmities.
- 5008. Inspection of county prisons; reports required.
- 5009. Biennial reports to general assembly.
- 5010. Attention secured for insane and other unfortunates.
- 5011. Public institutions to furnish information.
- 5012. Relatives ineligible to appointment in state institutions.
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ART. 2. COUNTY BOARDS OF CHARITIES AND PUBLIC WELFARE.

- 5014. County board of charities, etc.; appointment; duty.
- 5015. Term of office and meetings of board.
- 5016. County superintendent of public welfare.
- 5017. Powers and duties of county superintendent.
- 5018. Joint city and county welfare work.

ART. 1. STATE BOARD OF CHARITIES AND PUBLIC WELFARE

5004. Election and term of office. There shall be elected by the general assembly, upon the recommendation of the governor, seven persons who shall be styled "The State Board of Charities and Public Welfare," and at least one of such persons shall be a woman. At the session of the general assembly for the year one thousand nine hundred and seventeen all the members of such board shall be elected, three for a term of two years, two for a term of four years, and two for a term of six years, and thereafter the term shall be six years for all. The election shall be by concurrent vote of the general assembly, and appointments to fill vacancies in the board arising from any cause whatsoever, except expiration of term, shall be made for the residue of such term by the governor. The members of the board shall serve without pay, except that they shall receive their necessary expenses.

Rev., s. 3913; Code, s. 2331; 1868-9, c. 170, s. 1; 1909, c. 500; 1917, c. 170, s. 1.

5005. Meetings of board. The board shall hold meetings at least quarterly, and whenever called in session by the chairman, and shall make such rules and orders for the regulation of its own proceedings as it deems proper.

Rev., ss. 2807, 3914; Code, s. 2332; 1917, c. 170, s. 1; 1868-9, c. 170, s. 2; 1909, c. 899.

5006. Powers and duties of board. The board shall have the following powers and duties, to wit:

1. To investigate and supervise, through and by its own members or its agents or employees, the whole system of the charitable and penal institutions of the state, and to recommend such changes and additional provisions as it may deem needful for their economical and efficient administration.

2. To study the subjects of nonemployment, poverty, vagrancy, housing conditions, crime, public amusement, care and treatment of prisoners, divorce and

wife desertion, the social evil and kindred subjects and their causes, treatment, and prevention, and the prevention of any hurtful social condition.

3. To study and promote the welfare of the dependent and delinquent child and to provide, either directly or through a bureau of the board, for the placing and supervision of dependent, delinquent, and defective children.

4. To inspect and make report on private orphanages, institutions, maternity homes, and persons or organizations receiving and placing children, and to require such institutions to submit such reports and information as the state board may determine.

5. To grant license for one year to such persons or agencies to carry on such work as it believes is needed and is for the public good, and is conducted by reputable persons or organizations, and to revoke such license when in its opinion the public welfare or the good of the children therein is not being properly subserved.

6. To issue bulletins and have same printed to such amount and extent as may be approved by the state printing commission, and in other ways to inform the public as to social conditions and the proper treatment and remedies for social evils.

7. To issue subpœnas and compel attendance of witnesses, administer oaths, and to send for persons and papers whenever it deems it necessary in making the investigations provided for herein or in the other discharge of its duties, and to give such publicity to its investigations and findings as it may deem best for the public welfare.

8. To employ a trained investigator of social service problems who shall be known as the commissioner of public welfare, and to employ such other inspectors, officers, and agents as it may deem needful in the discharge of its duties.

9. To recommend to the legislature social legislation and the creation of necessary institutions.

10. To encourage employment by counties of a county superintendent of public welfare and to coöperate with the county superintendent of public welfare in every way possible.

11. To attend, either through its members or agents, social service conventions and similar conventions, and to assist in promoting all helpful publicity tending to improve social conditions of the state, and to pay out of the funds appropriated to the state board office expenses, salaries of employees, and all other expenses incurred in carrying out the duties and powers hereinbefore set out.

Rev., ss. 3914, 3915; Code, ss. 2332, 2333; 1868-9, c. 170, s. 3; 1917, c. 170, s. 1; 1919, c. 46, ss. 1, 2.

5007. Investigate and report on mental and physical infirmities. The board shall also give special attention to the causes of insanity, defect or loss of the several senses, idiocy, and the deformity and infirmity of the physical organization. They shall, besides their own observation, avail themselves of correspondence and exchange of facts of the labors of others in these departments, and thus be able to afford the general assembly data to guide them in future legislation for the amelioration of the condition of the people, as well as to contribute to enlighten public opinion and direct it to interests so vital to the prosperity of the

state. The state board shall keep and report statistics of the matters hereinbefore referred to and shall compile these reports and analyze them with a view of determining and removing the cause in order to prevent crime and distress.

Rev., s. 3916; Code, s. 2334; 1868-9, c. 170, s. 4; 1917, c. 170, s. 1.

5008. Inspection of county prisons; reports required. The state board shall have power to inspect county jails, county homes, and all prisons and prison camps and other institutions of a penal or charitable nature, and to require reports from sheriffs of counties and superintendents of public welfare and other county officers in regard to the conditions of jails or almshouses, or in regard to the number, sex, age, physical and mental condition, criminal record, occupation, nationality and race of inmates, or such other information as may be required by the state board. The plans and specifications of all new jails and almshouses shall, before the beginning of the construction thereof, be submitted for approval to the state board.

Rev., s. 3917; Code, s. 2335; 1868-9, c. 170, s. 5; 1917, c. 170, s. 1.

5009. Biennial reports to general assembly. The state board shall biennially prepare and submit to the general assembly a complete and full report of its doings during the preceding two years, showing the actual condition of all the state institutions under its supervision, with such suggestions as it may deem necessary and pertinent, which shall be printed by the state printer, and shall report such other matters as it may think for the benefit of the people of the state.

Rev., s. 3918; Code, s. 2338; 1868-9, c. 170, s. 8; 1870-1, c. 106; 1917, c. 170, s. 1.

5010. Attention secured for insane and other unfortunates. Whenever the board shall have reason to believe that any insane person, not incurable, is deprived of proper remedial treatment, and is confined in any almshouse or other place, whether such insane person is a public charge or otherwise, it shall be the duty of the board to cause such insane person to be conveyed to the proper state hospital for the insane, there to receive the best medical attention. So, also, it shall be their care that all the unfortunate shall receive benefit from the charities of the state.

Rev., s. 3919; Code, s. 2336; 1868-9, c. 170, s. 6; 1917, c. 170, s. 1.

5011. Public institutions to furnish information. The board may require the superintendents or other officers of the several charitable and penal institutions of the state to report to them any matter relating to the inmates of such institutions, their manner of instruction and treatment, with structure of their buildings, and to furnish them any desired statistics upon demand.

Rev., s. 3920; Code, s. 2337; 1868-9, c. 170, s. 7; 1917, c. 170, s. 1.

5012. Relatives ineligible to appointment in state institutions. No person shall be appointed to any place or position in any of the state institutions under the supervision of the state board who is related by blood or marriage to any member of the state board or to any of the principal officers, superintendents, or wardens of state institutions.

1917, c. 170, s. 1.

5013. Failure of officers to furnish information. If the board of commissioners of any county or the justices of the peace of any township, or any officer or

employee of any charitable or penal institution of the state shall fail, refuse, or neglect to furnish any information required by law to be furnished to the state board of charities and public welfare, when they have been provided with the necessary blank forms for such reports, or shall fail upon request to afford proper facilities for the examination of any charitable or penal institution of the state, they shall be guilty of a misdemeanor.

Rev., s. 3566; Code, s. 2341; 1891, c. 491, s. 2; 1869-70, c. 154, s. 3.

ART. 2. COUNTY BOARDS OF CHARITIES AND PUBLIC WELFARE

5014. County board of charities, etc.; appointment; duty. The state board shall appoint in each county three persons to be known as the County Board of Charities and Public Welfare, whose duty shall be to advise with and assist the state board in the work in the county, to make such visitations and reports as the state board may request, and to act in a general advisory capacity to the county and municipal authorities in dealing with questions of dependency and delinquency, distribution of the poor funds, and social conditions generally. The members of the county board of charities and public welfare shall serve without pay. The state board shall have the power at any time to remove any member of the county board.

1917, c. 170, s. 1; 1919, c. 46, s. 3.

5015. Term of office and meetings of board. The county board of charities and public welfare shall be appointed one for one year, one for two years, and one for three years, and subsequent appointments shall be for a term of three years. The persons so appointed shall meet immediately after their appointment and organize by electing a chairman, and the county superintendent of public welfare shall act as secretary. The county board shall meet at least once a month with the county superintendent of public welfare, and advise with him in regard to problems pertaining to his office.

1917, c. 170, s. 1; 1919, c. 46, s. 4.

5016. County superintendent of public welfare. The county commissioners and county board of education in each county shall, in joint session not later than July fifteenth, nineteen hundred and nineteen, appoint a county superintendent of public welfare, who shall serve at the pleasure of said boards and whose salary shall be fixed and paid jointly from the public funds of the said boards. In those counties where the population is not more than twenty-five thousand the county superintendent of public instruction may be appointed superintendent of public welfare; but no person shall be appointed as county superintendent of public welfare who has not a certificate of qualification from the state board.

1917, c. 170, s. 1; 1919, c. 46, ss. 3, 4.

5017. Powers and duties of county superintendent. The county superintendent of public welfare shall be the chief school attendance officer of the county, and shall have other duties and powers as follows:

1. To have, under control of the county commissioners, the care and supervision of the poor and to administer the poor funds.

2. To act as agent of the state board in relation to any work to be done by the state board within the county.

3. Under the direction of the state board, to look after and keep up with the condition of persons discharged from hospitals for the insane and from other state institutions.

4. To have oversight of prisoners in the county on parole from penitentiaries, reformatories, and all parole prisoners in the county.

5. To have oversight of dependent and delinquent children, and especially those on parole or probation.

6. To have oversight of all prisoners in the county on probation.

7. To promote wholesome recreation in the county and to enforce such laws as regulate commercial amusement.

8. Under the direction of the state board, to have oversight of dependent children placed in the county by the state board.

9. To assist the state board in finding employment for the unemployed.

10. To investigate into the cause of distress, under the direction of the state board, and to make such other investigations in the interest of social welfare as the state board may direct.

1917, c. 170, s. 1; 1919, c. 46, s. 3.

5018. Joint city and county welfare work. In counties where there are cities which already have a local board of welfare or other social agencies, or which may wish to establish such, the governing bodies of such cities may make such arrangements with the county commissioners to consolidate the work under the authority and supervision of the county board of charities and public welfare as may be mutually agreed upon with such division of expenses as may be equitable. The governing bodies of such cities and the county commissioners are authorized to make such provision for the expense of carrying on the work as they may deem advisable, and may delegate to the county board of charities and public welfare all necessary power.

1919, c. 46, s. 4.

CHAPTER 89

CEMETERIES

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ART. 1. CARE OF RURAL CEMETERIES

5019. County commissioners to provide list of public and abandoned cemeteries.

It shall be the duty of the boards of county commissioners of the various counties in the state to prepare and keep on record in the office of the register of deeds a list of all the public cemeteries in the counties outside the limits of incorporated towns and cities, and not established and maintained for the use of an incorporated town or city, together with the names and addresses of the persons in possession and control of the same. To such list shall be added a list of the public cemeteries in the rural districts of such counties which have been abandoned, and it shall be the duty of the boards of county commissioners to furnish to the legislative reference librarian copies of the lists of such public and abandoned cemeteries, to the end that he may furnish to the boards, for the use of the persons in control of such cemeteries, suitable literature, suggesting methods of taking care of such places.

1917, c. 101, s. 1.

5020. Appropriations by county commissioners. To encourage the persons in possession and control of the public cemeteries referred to in the preceding section to take proper care of and to beautify such cemeteries, to mark distinctly their boundary line with evergreen hedges or rows of suitable trees, and otherwise to lay out the grounds in an orderly manner, the board of county commissioners of any county, upon being notified that two-thirds of the expense necessary for so marking and beautifying any cemetery has been raised by the local governing body of the institution which owns the cemetery, and is actually in hand, is hereby required to appropriate from the general fund of the county one-third of the expense necessary to pay for such work, the amount appropriated by the board of commissioners in no case to exceed fifteen dollars for each cemetery.

1917, c. 101, s. 2.

5021. County commissioners to have control of abandoned cemeteries. The county commissioners of the various counties are required to take possession and control of all abandoned public cemeteries in their respective counties, to see that the boundaries and lines are clearly laid out, defined, and marked, and to take proper steps to preserve them from encroachment, and they are hereby authorized to appropriate from the general fund of the county whatever sums may be necessary from time to time for the above purposes.

1917, c. 101, s. 3.

ART. 2. CEMETERIES FOR INMATES OF COUNTY HOMES

5022. County commissioners may establish new cemeteries. The boards of county commissioners of the various counties in the state are authorized and empowered to locate and establish new graveyards or cemeteries upon the lands of their respective counties for the burial of the inmates of the county homes.

1917, c. 151, s. 1.

5023. Removal and reinterment of bodies. Whenever the county commissioners have established new graveyards or cemeteries, they are authorized and empowered to remove to such graveyards or cemeteries all bodies of deceased inmates of the county homes.

1917, c. 151, s. 2.

ART. 3. TRUST FUNDS FOR THE CARE OF CEMETERIES

5024. Money deposited with clerk of superior court. For the maintenance and preservation of graves, burial plats, graveyards and cemeteries which may be neglected, any person, firm, or corporation may, by will or otherwise, place in the hands of the clerk of the superior court of any county in the state where such grave or lot is located any sum of money not less than one hundred dollars nor more than two thousand dollars, the income from which is to be used for keeping in good condition any grave, burial plat, graveyard, or cemetery in the county in which the money is placed, with specific instructions as to the use of the fund.

1917, c. 155, s. 1.

5025. Separate record of accounts to be kept. It shall be the duty of the clerk of the superior court to keep a separate record for keeping account of the money deposited as above provided, to keep a perpetual account of the same therein, and to record therein the specific instructions about the use of the income on such money. He shall see that the income is spent according to such specific instructions, and shall make report of the same from year to year in the same manner as if it were guardian funds.

1917, c. 155, s. 1.

5026. Funds to be kept perpetually. All money placed in the office of the superior court clerk in accordance with this article shall be held perpetually, and no one shall have authority to withdraw or change the direction of the income on same.

1917, c. 155, s. 2.

5027. Investment of funds. The superior court clerk, with the advice and consent of the sheriff and register of deeds of such county, who shall constitute an advisory committee to the clerk, may invest such money in North Carolina state bonds, county bonds of any county within the state, municipal bonds of any town of more than ten thousand population in the state, or may invest same in any other way, locally, as they may deem wise.

1917, c. 155, s. 3.

5028. Clerk's bond and fees. The clerk of the superior court shall give bond in some surety company, to be approved by the county commissioners, in a sufficient amount to cover such sums as may be held by him, the premium on such bond to be paid out of the income on such money. The clerk shall receive for his services and responsibilities a commission of ten per cent on the net income each year of such money; and the fees or commissions so received by him under this article shall not be taken into consideration as a part of his salary.

1917, c. 155, ss. 3, 4.

5029. Funds exempt from taxation. All money referred to in the preceding sections of this article shall be exempt from all state, county, township, town, and city taxes.

1917, c. 155, s. 4.

See sections 1714, 4320, 4321, 4322, 7126.

ART. 4. REMOVAL OF GRAVES

5030. Removal to enlarge churches authorized. In those cases where any church authorities desire to enlarge a church building and where it becomes necessary or expedient to remove certain graves in order to secure the necessary room for such enlargement, it shall be lawful for such church authorities after thirty days notice to the relatives of deceased, if any are known, and if none are known, then after notice posted at the church door for a like time, to remove such graves to a suitable plat in the church cemetery or in another cemetery, due care being taken to protect tombstones and replace them properly, so as to leave the graves in as good condition as before removal.

1919, c. 245.

NOTE.—For condemnation of graveyards, see ss. 1699, 1714. Cemeteries not established near water supply, see Public Health. Interference with graves, etc., see ss. 4317, 4320, 4322.

See sections 4320-4322.

CHAPTER 90

CHILD WELFARE

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ART. 1. CHILD LABOR REGULATIONS

5031. Child welfare commission created; duties. The state superintendent of public instruction, the secretary of the state board of health, and the commissioner of public welfare of the state of North Carolina are hereby constituted the state child welfare commission, and they shall serve without additional compensation. It shall be the duty of this commission to make and formulate such rules and regulations for enforcing and carrying out the provisions of this ar-

ticle, and of the laws relating to seats for women employees and the laws requiring separate toilets for sexes and races, as in its judgment it shall deem necessary.

1919, c. 100, s. 7.

5032. Employment of children under fourteen regulated. No child under the age of fourteen years shall be employed, or permitted to work, in or about or in connection with any mill, factory, cannery, workshop, manufacturing establishment, laundry, bakery, mercantile establishment, office, hotel, restaurant, barber shop, bootblack stand, public stable, garage, place of amusement, brick yard, lumber yard, or any messenger or delivery service, except in cases and under regulations prescribed by the commission herein created. The employments in this section enumerated shall not be construed to include bona fide boys' and girls' canning clubs recognized by the agricultural department of this state; and such canning clubs are hereby expressly exempted from the provisions of this article.

1919, c. 100, s. 5.

For liability for damages resulting from employment of children before the child labor act of 1903, c. 463, Rev. 3362-3364, see *Ward v. Allen*, 126-948; *Fitzgerald v. Furniture Co.*, 131-645; *Hendrix v. Cotton Mills*, 138-170. Since the act of 1903 and subsequent acts of 1907, c. 463, Rev. 1981a-1981e, 1913, c. 64; 1915, c. 148; see *Rolin v. Tobacco Co.*, 141-310; *Leathers v. Tobacco Co.*, 144-342; *Starnes v. Mfg. Co.*, 147-556; *Pettit v. R. R.*, 156-119; *McGowan v. Mfg. Co.*, 167-192; *Evans v. Lumber Co.*, 174-31.

General effect of decisions as summarized by Allen, J., in *Pettit v. R. R.*, 156-119: 1. The statute is constitutional; 2. It applies only to the industries mentioned; 3. Employment of child under age is negligence per se; 4. Such negligence is proximate, if the injury is the result of the employment; 5. There is no assumption of risk by child; 6. Negligence of parent not imputed to child; 7. Presumption against contributory negligence; 8. Presumption against the capacity to appreciate the danger; 9. Presumption may be rebutted.

5033. Prohibited employments of children under sixteen. No person under sixteen years of age shall be employed, or permitted to work, at night in any of the places or occupations referred to in the first preceding section, between the hours of nine p. m. and six a. m., and no person under sixteen years of age shall be employed or permitted to work in or about or in connection with any quarry or mine.

1919, c. 100, s. 6.

5034. Age certificates. If the employer of any person under sixteen years of age shall, at the time of such employment, in good faith, procure, rely upon, and keep on file a certificate issued in such form and under such conditions and by such persons as the said commission herein provided for shall prescribe, showing that the person is of legal age for such employment, such certificate shall be prima facie evidence of the age of the person and the good faith of the employer. No person shall knowingly make a false statement or present false evidence in or in relation to any such certificate or application therefor, or cause any false statement to be made which may result in the issuance of an improper certificate of employment.

1919, c. 100, s. 10.

Effect of failure to have certificate under former statute, 1907, c. 463, Rev., 1981d: *Rolin v. Tobacco Co.*, 141-300; see, also, *Leathers v. Tobacco Co.*, 144-351.

5035. Commission may employ agents. The commission shall have authority to appoint and employ such agents for the purpose of enforcing the provisions of this article as may be found to be necessary, and they may use the county superintendent of public welfare or chief school attendance officer or truant officer of the several counties for the purpose of carrying out such provisions, and they may use the agents specially designated for carrying out the provisions of this article to aid in carrying out the provisions of the general compulsory school attendance law under subchapter nine (IX) of the chapter on education.

1919, c. 100, s. 9.

5036. Inspection by agents; obstruction unlawful. For the purpose of securing the proper enforcement of the provisions of this article and of the laws relating to seats for women employees, and the laws requiring separate toilets for sexes and races, the commission, or its duly authorized agents, shall have authority to enter and inspect, at any time, mines, quarries, mills, factories, canneries, workshops, manufacturing establishments, laundries, bakeries, mercantile establishments, offices, hotels, restaurants, barber shops, bootblack stands, public stables, garages, places of amusement, brick yards, lumber yards, and other places of employment; and it shall be unlawful for any person, firm, or corporation to refuse permission to enter, obstruct, or prevent any duly authorized agent of the commission in his effort to make the inspection herein provided for.

1919, c. 100, s. 8.

5037. Expenses of commission. The state treasurer shall honor all warrants for necessary expenses incurred by the commission for meeting the salaries and expenses of any agents employed by the commission in the enforcement of this article, and the necessary expenses incurred by the commission in carrying out the provisions of this article, out of funds not otherwise appropriated, such warrants to be drawn upon the state auditor by the commission hereby created, or its duly authorized agent. Such expenses so incurred shall not exceed the sum of six thousand dollars per annum.

1919, c. 100, s. 11.

5038. Violations of this article and of certain other laws a misdemeanor. Any person, firm, or corporation violating any of the provisions of this article, or of the laws relating to seats for women employees or of the laws requiring separate toilets for sexes and races, shall be guilty of a misdemeanor, and punished by fine or imprisonment, or both, within the discretion of the court.

1919, c. 100, s. 12.

NOTE.—See under chapter Education: General compulsory attendance law, art. 47; Compulsory attendance of deaf children, art. 49; Compulsory attendance of blind children, art. 50.

For violation as to employing child labor, see cases cited under section 5032.

ART. 2. JUVENILE COURTS

5039. Exclusive original jurisdiction over children. The superior courts shall have exclusive original jurisdiction of any case of a child less than sixteen years of age residing in or being at the time within their respective districts:

1. Who is delinquent or who violates any municipal or state law or ordinance

or who is truant, unruly, wayward, or misdirected, or who is disobedient to parents or beyond their control, or who is in danger of becoming so; or

2. Who is neglected, or who engages in any occupation, calling, or exhibition, or is found in any place where a child is forbidden by law to be and for permitting which an adult may be punished by law, or who is in such condition or surroundings or is under such improper or insufficient guardianship or control as to endanger the morals, health, or general welfare of such child; or

3. Who is dependent upon public support or who is destitute, homeless, or abandoned, or whose custody is subject to controversy.

When jurisdiction has been obtained in the case of any child, unless a court order shall be issued to the contrary, or unless the child be committed to an institution supported and controlled by the state, it shall continue for the purposes of this article during the minority of the child. The duty shall be constant upon the court to give each child subject to its jurisdiction such oversight and control in the premises as will conduce to the welfare of such child and to the best interests of the state.

1919, c. 97, s. 1.

This article takes the place of the Apprentice Law, Revisal, ch. 4, and the Juvenile Delinquent Law, 1915, c. 222.

The act of 1915, c. 222, was held to be a valid exercise of police power. It applied to two classes of delinquents: those who had not violated any law, and those who had violated some criminal law; in the latter case it was necessary for the criminal offense to be determined by a court of competent jurisdiction: *State v. Newell*, 172-933.

5040. Juvenile courts created; part of superior court. There shall be established in each county of the state a separate part of the superior court of the district for the hearing of cases coming within the provisions of this article. Such part of the superior court shall be called the juvenile court of county.

The clerk of the superior court of each county in the state shall act as judge of the juvenile court in the hearing of cases coming within the provisions of this article, in which cases the child or children concerned therein reside in or are at the time within such county. Proceedings in such cases may be initiated before such judge, and in hearing such cases such judge shall comply with all the requirements and conform to the procedure provided in this article.

1919, c. 97, s. 2.

5041. Definitions of terms. The term "court" when used in this article without modification shall refer to the juvenile court to be established in each county as herein provided. The term "judge" when used in this article shall refer to the clerk of the superior court acting as judge of the juvenile court. The term "child" shall mean any minor less than sixteen years of age. The term "adult" shall mean any person sixteen years of age or over.

1919, c. 97, s. 3.

5042. Sessions of court; records; general provisions. Sessions of the court shall be held at such times and in such places within the county as the judge shall from time to time determine. In the hearing of any case coming within the provisions of this article the general public may be excluded and only such

persons admitted thereto as have a direct interest in the case. Sessions of the court shall not be held in conjunction with any other business of the superior court, and children's cases shall not be heard at the same time as those against adults.

The court shall maintain a full and complete record of all cases brought before it, to be known as the juvenile record. All records may be withheld from indiscriminate public inspection in the discretion of the judge of the court, but such record shall be open to inspection by the parents, guardians, or other authorized representatives of the child concerned. No adjudication under the provisions of this article shall operate as a disqualification of any child for any public office, and no child shall be denominated a criminal by reason of such adjudication, nor shall such adjudication be denominated a conviction.

This article shall be construed liberally and as remedial in character. The powers hereby conferred are intended to be general and for the purpose of affecting the beneficial purposes herein set forth. It is the intention of this article that in all proceedings under its provisions the court shall proceed upon the theory that a child under its jurisdiction is the ward of the state and is subject to the discipline and entitled to the protection which the court should give such child under the circumstances disclosed in the case.

1919, c. 97, s. 4.

5043. Petition to bring child before court. Any person having knowledge or information that a child is within the provisions of this article and subject to the jurisdiction of the court, may file with the court a petition verified by affidavit, stating the alleged facts which bring such child within such provisions. The petition shall set forth the name and residence of the child and of the parents, or the name and residence of the person having the guardianship, custody, or supervision of such child, if the same be known or ascertained by the petitioner, or the petition shall state that they are unknown, if that be the fact.

1919, c. 97, s. 5.

5044. Issuance of summons; traveling expenses allowed. Upon the filing of the petition or upon the taking of a child into custody, the court may forthwith, or after an investigation by a probation officer or other person, cause to be issued a summons signed by the judge or the clerk of the court directed to the child, unless such child has been taken into custody, and to the parents or, in case there is no parent, to the person having the guardianship, custody, or supervision of the child, or the person with whom the child may be, requiring them to appear with the child at the place and time stated in the summons to show cause why the child should not be dealt with according to the provisions of this article.

The judge may in his discretion authorize the payment of necessary traveling expenses incurred by any witness or person summoned or otherwise required to appear at the hearing of any case coming within the provisions of this article. Such expenses, when approved by the judge of the superior court, shall be a charge upon the county in which the petition is filed.

1919, c. 97, s. 6.

5045. Custody of child may be immediate. If it appears from the petition that the child is embraced within subdivision one of the first section of this article, or is in such condition or surroundings that the welfare of the child requires that its custody be immediately assumed, the court may endorse or cause to be endorsed upon the summons a direction that the officer serving the same shall at once take such child into his custody.

In the case of any child who has been taken into custody or pending the final disposition of any case, the child may be released in the custody of a parent or other person having charge of the child or in the custody of a probation officer or other person appointed by the court, to be brought before the court at the time designated. Any child embraced in this article may be admitted to bail as provided by law. When not released as herein provided such child, pending the hearing of the case, shall be detained in such place of detention as hereinafter provided for.

1919, c. 97, s. 7.

5046. Service of summons. Service of summons shall be made personally by reading to and leaving with the persons summoned a true copy thereof: Provided, that if the court is satisfied that reasonable but unsuccessful effort has been made to serve the summons personally upon any of the parties named therein, or if it shall appear to the satisfaction of the court that it is impracticable to serve a summons personally upon any of them, the court may make an order providing for service of the summons by registered mail or by publication or otherwise in such manner as the judge shall determine. It shall be sufficient to confer jurisdiction if service is effected at any time before the time fixed in the summons for the return thereof; but the court, if requested by the child or a parent, or, in case there is no parent, by the person having the guardianship, custody or supervision of the child, shall not proceed with the hearing earlier than three days after the service. Failure to serve a summons upon any person other than said child shall not impair the jurisdiction of the court to proceed in cases arising under subdivision one of the first section of this article, provided that for good cause shown the court shall have made an order dispensing with such service.

If the person summoned as herein provided shall fail without reasonable cause to appear and abide the order of the court or bring the child, he may be proceeded against as for contempt of court. In case the summons cannot be served or the party served fails to obey the same, and in any case when it shall be made to appear to the court that such summons will be ineffectual, or that the welfare of the child requires that he shall be brought forthwith into the custody of the court, a warrant may be issued on the order of the court either against the parent or guardian or other person having custody of the child or with whom the child may be, or against the child himself.

The sheriff or other lawful officer of the county in which the action is taken shall serve all papers as directed by the court, but the papers may be served by any person delegated by the court for that purpose.

1919, c. 97, s. 8.

5047. Hearing; disposition of child. Upon the return of the summons or other process or after any child has been taken into custody, at the time set for

the hearing, the court shall proceed to hear and determine the case in a summary manner. The court may adjourn the hearing from time to time and inquire into the habits, surroundings, condition and tendencies of the child so as to enable the court to render such order or judgment as shall best conserve the welfare of the child and carry out the objects of this article. In all cases the nature of the proceedings shall be explained to the child and to the parents or the guardian or person having the custody or the supervision of the child. At any stage of the case the court may, in its discretion, appoint any suitable person to be the guardian ad litem of the child for the purposes of the proceeding.

The court, if satisfied that the child is in need of the care, protection or discipline of the state, may so adjudicate, and may find the child to be delinquent, neglected, or in need of more suitable guardianship. Thereupon the court may—

1. Place the child on probation subject to the conditions provided hereinafter; or

2. Commit the child to the custody of a relative or other fit person of good moral character, subject, in the discretion of the court, to the supervision of a probation officer and the further orders of the court; or

3. Commit the child to the custody of the state board of charities and public welfare, to be placed by such board in a suitable family home and supervised therein; or

4. Commit the child to a suitable institution maintained by the state or any subdivision thereof, or to any suitable private institution, society or association incorporated under the laws of the state and approved by the state board of charities and public welfare authorized to care for children, or to place them in suitable family homes; or

5. Render such further judgment or make such further order of commitment as the court may be authorized by law to make in any given case.

6. If a child of fourteen years of age be charged with a felony for which the punishment as now fixed by law cannot be more than ten years in prison his case shall be investigated by the probation officer and the judge of the juvenile court as provided for in this article, unless it appears to the judge of the juvenile court that the case should be brought to the attention of the judge of the superior court, in which case the child shall be held in custody or bound to the next term of the superior court as now provided by law.

1919, c. 97, s. 9.

Committing a minor defendant to a reformatory is not imprisonment as a punishment for crime: *In re Watson*, 157-340. See section 7322.

5048. Child to be kept apart from adult criminals; detention homes. No child coming within the provisions of this article shall be placed in any penal institution, jail, lockup, or other place where such child can come into contact at any time or in any manner with any adult convicted of crime and committed or under arrest and charged with crime. Provision shall be made for the temporary detention of such children in a detention home to be conducted as an agency of the court for the purposes of this article, or the judge may arrange for the boarding of such children temporarily in a private home or homes in the custody of some fit person or persons subject to the supervision of the court, or the judge may

arrange with any incorporated institution, society or association maintaining a suitable place of detention for children for the use thereof as a temporary detention home.

In case a detention home is established as an agency of the court it shall be furnished and carried on as far as possible as a family home in charge of a superintendent or matron who shall reside therein. The judge of the juvenile court may, with the approval of the state board of charities and public welfare, appoint a matron or superintendent or both and other necessary employees for such home in the same manner as probation officers are appointed under this article, their salaries to be fixed and paid in the same manner as the salaries of probation officers. The necessary expense incurred in maintaining such detention home shall be a public charge.

In case the judge shall arrange for the boarding of children temporarily detained in private homes, a reasonable sum for the board of such children while temporarily detained in such homes shall be paid by the county in which such child shall reside or may be found.

In case the judge shall arrange with any incorporated institution, society or association, for the use of a detention home maintained by such institution, society or association, he shall enter an order which shall be effectual for that purpose and a reasonable sum shall be appropriated by the county commissioners for the compensation of such institution, society or association for the care of children residing or found within the county who may be detained therein.

1919, c. 97, s. 10.

5049. Probation officers; appointment and discharge; compensation. The judge of the juvenile court in each county shall appoint one or more suitable persons as probation officers who shall serve under his direction. The appointment of such probation officers shall be approved by the state board of charities and public welfare.

The county superintendent of public welfare shall be the chief probation officer of every juvenile court in his county and shall have supervision over the work of any additional probation officer which may be appointed.

The judge appointing any probation officer may discharge such officer for cause after serving such officer with a written notice, but no probation officer shall be discharged without the approval of the state board of charities and public welfare.

The judge appointing any probation officer may in his discretion determine that a suitable salary be paid and may, with the approval of the judge of the superior court, fix the amount thereof. Such salary so determined and so approved shall be paid by the board of county commissioners; but no person shall be paid a salary as probation officer without a certificate of qualification from the state board of charities and public welfare.

The state board of charities and public welfare shall establish rules and regulations pursuant to which appointments under this article shall be made, to the end that such appointments shall be based upon merit only.

The appointment of a probation officer shall be in writing and one copy of the order of appointment shall be delivered to the officer so appointed and another filed in the office of the state board of charities and public welfare.

1919, c. 97, s. 11.

5050. Probation; conditions; revocation. When the court places any child or adult on probation as provided in this article it shall determine the conditions of probation, which may be modified by the court at any time. A child shall remain on probation for such period as the court shall determine during the minority of such child. An adult shall remain on probation for such period as the court shall determine, not to exceed five years. The conditions of probation shall be such as the court shall prescribe, and may include among other conditions any or several of the following: that the probationer shall indulge in no unlawful or injurious habits; shall avoid places or persons of disreputable or harmful character; shall report to the probation officer as directed by the court or probation officer; shall permit the probation officer to visit him in a reasonable manner at his place of abode or elsewhere; shall answer any reasonable inquiries on the part of the probation officer concerning his conduct or condition; shall, if a child of compulsory school age, attend school regularly; shall, if an adult or a child who does not attend school, work faithfully at suitable employment; shall remain or reside within a specified place or locality; shall pay a fine in one or several sums; shall make restitution or reparation to the aggrieved parties for actual damages or losses caused by an offense upon such conditions as the court shall determine; and shall make payment for the support of any lawful dependents as required by the court.

Any person on probation may at any time be required to appear before the court, and in case of his failure to do so when properly notified by the probation officer, the court may issue a warrant for his arrest. In the case of a child on probation, if the court believes that the welfare of such child will thereby be promoted, the probation may be revoked at any time and the court may make such other disposition of the child as it might have made at the time the child was placed on probation. An adult on probation who violates any of the conditions thereof may be arrested upon a warrant issued by the court and the court may impose any penalties which it might have imposed at the time the defendant was placed on probation.

1919, c. 97, s. 12.

5051. Duties and powers of probation officers. It shall be the duty of a probation officer to make such investigations before, during or after the trial or hearing of any case coming before the court as the court shall direct, and shall report thereon in writing. The probation officer shall take charge of any child before or after the trial or hearing when so directed by the court. The probation officer shall furnish to each person released on probation under his supervision a written statement of the conditions of probation and shall instruct the probationer and other persons responsible for the welfare of the probationer regarding same, and shall enforce all the conditions of probation. Such officer shall keep informed concerning the conduct and condition of each person on probation under his supervision by visiting, requiring of reports, and in other ways, and shall report upon the progress of each case under his supervision at least monthly to the court. Such officer shall use all suitable methods not inconsistent with the conditions imposed by the court to aid and encourage persons on probation and to bring about improvement in their conduct and condition. Such officer shall keep detailed records of his work. He shall keep accurate and complete accounts of all moneys collected from persons under his su-

pervision; he shall give receipts therefor and shall make at least monthly returns thereof; such officer shall make such report to the state board of charities and public welfare as it may from time to time require, and shall perform such other duties as the court under whose direction such officer is serving shall direct. Every probation officer shall have all the powers of a peace officer within the jurisdiction of the court which he serves. With the approval or under the direction of the judge of the court in which a probation officer is serving, such officer is authorized and empowered to act as probation officer over any person on probation transferred to his supervision from any other court and may act as parole officer over any person released from a correctional institution when requested to do so by the authorities thereof and when authorized so to act by the judge of the court in which such probation officer is serving.

1919, c. 97, s. 13.

5052. Support of child committed to custodial agency. Whenever any child is committed by the court to the custody of an institution, association, society or person other than its parent or guardian, compensation for the care of such child, when approved by the order of the court, shall be a charge upon the county, but the court may at the issuance and service of an order to show cause on the parent or other person having the duty under the law to support such child adjudge that such parent or other person shall pay in such manner as the court may direct such sum as will cover in whole or in part the support of such child, and wilful failure to pay such sum may be punished as a contempt of court.

1919, c. 97, s. 14.

5053. Selection of custodial agency. In committing any child to any institution or other custodial agency other than one supported and controlled by the state or in placing the child under any guardianship other than that of its natural guardians, the court shall as far as practicable select as the custodial agency an institution, society or association governed by persons of like religious faith as the parents of such child or an individual holding the same religious belief.

1919, c. 97, s. 15.

5054. Modification of judgment; return of child to parents. Any order or judgment made by the court in the case of any child shall be subject to such modification from time to time as the court may consider to be for the welfare of such child, except that a child committed to an institution supported and controlled by the state may be released or discharged only by the governing board or officer of such institution.

Any parent or guardian, or, if there be no parent or guardian, the next friend of any child who has been or shall hereafter be committed by the court to the custody of an institution other than an institution supported and controlled by the state, or to the custody of any association, society or person, may at any time file with the court a petition verified by affidavit setting forth under what conditions such child is living, and that application for the release of the child has been made to and denied by such institution, association, society or person,

or that institution, association, society or person has failed to act upon such application within a reasonable time. A copy of such petition shall at once be served by the court upon such institution, association, society or person, whose duty it shall be to file a reply to the same within five days. If, upon examination of the petition and reply, the court is of the opinion that an investigation should be had, it may, upon due notice to all concerned, proceed to hear the facts and determine the question at issue, and may return such child to the custody of its parents or guardian or direct such institution, association, society or person to make such other arrangements for the child's care and welfare as the circumstances of the case may require.

Any child while under the jurisdiction of the court shall be subject to the visitation of the probation officer or other agent of the court authorized to visit such child.

1919, c. 97, s. 16.

5055. Guardian appointed if welfare of child promoted. Whenever in the course of a proceeding instituted under this article it shall appear to the court that the welfare of any child within the jurisdiction of the court will be promoted by the appointment of an individual as general guardian of its person, when such child is not committed to an institution or to an incorporated society or association, or by the appointment of an individual or corporation as general guardian of its property, the court shall have jurisdiction to make such appointment, either upon the application of the child or of some relative or friend, or upon the court's own motion, and in that event an order to show cause may be made by the court to be served upon the parent or parents of such child in such manner and for such time, prior to the hearing, as the court may deem reasonable. In any case arising under this article the court may determine as between parents or others whether the father or mother or what person shall have the custody and direction of said child, subject to the provisions of the preceding section.

1919, c. 97, s. 17.

5056. Medical examination of child; disposition if mentally defective. The court, in its discretion, either before or after a hearing, may cause any child within its jurisdiction to be examined by one or more duly licensed physicians, who shall submit a written report thereon to the court. If it shall appear to the court that any child within the jurisdiction of the court is mentally defective he may cause the child to be examined by two licensed physicians, and on the written statement of the two examining physicians that it is their opinion that the child is mentally defective, feeble-minded, or epileptic, the court may commit such child to an institution authorized by law to receive and care for mentally defective, feeble-minded, or epileptic children, as the case may be. No child shall be committed to such institution unless the parent or parents or the guardian or custodian of such child, if such there be, are given an opportunity for a hearing.

Whenever a child within the jurisdiction of the court and under the provisions of this article appears to the court to be in need of medical or surgical care a suitable order may be made for the treatment of such child in a hospital or

otherwise, and the expense thereof, when approved by the court, shall be a charge upon the county or the appropriate subdivision thereof; but the court may adjudge that the person or persons having the duty under the law to support such child shall pay a part or all of the expenses of such treatment as provided in section 5052 of this article.

1919, c. 97, s. 18.

5057. Neglect by parents; encouraging delinquency by others; penalty. A parent, guardian or other person having the custody of a child who omits to exercise reasonable diligence in the care, protection or control of such child, causing it to be adjudged delinquent, neglected, or in need of the care, protection or discipline of the state as provided in this article, or who permits such child to associate with vicious, immoral or criminal persons, or to beg or solicit alms, or to be an habitual truant from school, or to enter any house of prostitution or assignation or any place where gambling is carried on, or to enter any place which may be injurious to the morals, health, or general welfare of such child, and any such person or any other person who knowingly or wilfully is responsible for, encourages, aids, causes or connives at or who knowingly or wilfully does any act to produce, promote or contribute to the condition which caused such child to be adjudged delinquent, neglected, or in need of the care, protection or discipline of the state, shall be guilty of a misdemeanor.

1919, c. 97, s. 19.

5058. Appeals. An appeal may be taken from any judgment or order of the juvenile court to the superior court having jurisdiction in the county by the parent or, in case there is no parent, by the guardian, custodian or next friend of any child, or by any adult described in the two preceding sections of this article whose case has been heard by the juvenile court. Such appeal shall be taken in the manner provided for appeals to the superior court; and written notice of such appeal shall be filed with the juvenile court within five days after the issuance of the judgment or order of such court.

1919, c. 97, s. 20.

5059. Compensation of judge. The judge of the juvenile court shall be paid a reasonable compensation for his services, the amount to be determined by the county commissioners, and the amount thus determined by the county commissioners shall be charged against the public funds of the county. And such compensation shall be independent of any compensation which may come to him as clerk of the superior court.

1919, c. 97, s. 21.

5060. Public officers and institutions to aid. It is hereby made the duty of every state, county or municipal official or department to render such assistance and coöperation within his or its jurisdiction or power as shall further the objects of this article. All institutions or other agencies to which any person coming within the provisions of this article may be sent are hereby required to give such information concerning such child to the court or to any other officer appointed by it as said court or official may require for the purposes of this

article. The court is authorized to seek the coöperation of all societies, organizations or individuals to the end that the court may be assisted in every way in the discharge of its duties.

1919, c. 97, s. 22.

5061. Rules of procedure devised by court. The court shall have power to devise and publish rules to regulate the procedure in cases coming within the provisions of this article and for the conduct of all probation and other officers of the court in such cases. The court shall devise and cause to be printed for public use such forms for records and for various petitions, orders, processes, and other papers in the cases coming within this article as shall meet the requirements thereof, and all expenses incurred in complying with the provisions of this article shall be a public charge.

1919, c. 97, s. 23.

5062. City juvenile courts and probation officers. Every city in North Carolina where the population was, by the census of one thousand nine hundred and ten, ten thousand or more shall maintain a juvenile court, to which is hereby given the powers, duties and obligations of this article to be exercised within their territorial boundaries. Such city juvenile courts shall conduct their business in accordance with the procedure set forth in this article as applying to the county juvenile court. It is hereby made the duty of governing bodies of such cities to make provision for such courts and bear the expense thereof, either by requiring the recorder to act as a juvenile judge or by the appointment of a separate judge. The governing bodies of such cities shall also appoint one or more assistant probation officers who shall serve within its jurisdiction under the general supervision of the chief probation officer of the county, which chief probation officer of the county is hereby made the chief probation officer of the city court herein provided for. The salary of the chief juvenile court judge shall be fixed and paid by the governing body of the city, and such governing bodies are hereby given authority to expend such sums from the public funds of the city as may be required to carry this article into effect.

In case it may appear to the governing bodies of such cities herein described that it would be best to allow the county juvenile court to transact the business of the city, they may make such provisions and agreements with the county commissioners for the expense of the joint court as may be agreed upon, and in such event such a city is hereby permitted to make such arrangement in lieu of establishing a city juvenile court. But in case the county commissioners will not agree to such arrangement, then the city must establish a juvenile court, as provided in this section.

Any town of five thousand population which is not a county seat, and in which there is a recorder's court, may, if deemed advisable and necessary by the governing body, provide for the conduct of a juvenile court within the territorial jurisdiction of such recorder's court: Provided, that the provisions and procedure of this article are fully followed as in case for towns of ten thousand inhabitants.

1919, c. 97, s. 24.

ART. 3. CONTROL OVER INDIGENT CHILDREN

5063. Institution has authority of parent or guardian. Every indigent child which may be placed in any orphanage, children's home, or child-placing institution in this state, which shall be an institution existing under and by virtue of the laws of this state, shall be under the control of the authorities of such institution so long as, under the rules and regulations of such institution, the child is entitled to remain in the same. The authority of the institution shall be the same as that of a parent or guardian before the child was placed in the institution; but such authority shall extend only to the person of the child.

1917, c. 133, s. 1.

5064. Regulations of institution not abrogated. Nothing in this article shall be construed in any way to abrogate any of the rules and regulations of such institutions in so far as the rules and regulations have for their purpose the welfare and protection of the institutions.

1917, c. 133, s. 2.

5065. Enticing a child from institution. It is unlawful for any person to entice or attempt to entice, persuade, harbor, or conceal, or in any manner induce any indigent child to leave any of the institutions hereinbefore mentioned without the knowledge or consent of the authorities of such institutions. But this article shall not interfere with a mother's right to her child in case she becomes able to sustain her child; and the county commissioners in the county in which she resides shall in case of doubt have authority to recommend to the institution concerning the child.

1917, c. 133, s. 3.

5066. Violation a misdemeanor. Any person violating any of the provisions of the three preceding sections shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the court.

1917, c. 133, s. 4.

5067. Institutions for care of children must have license. It shall be unlawful for any person, institution, or organization for the purpose of caring for or placing children to carry on such work or business without having in full force a written license therefor from the state board of charities and public welfare.

1919, c. 46.

NOTE.—For offenses against children and punishment therefor, see the following sections under chapter, Crimes and Punishments:

Ravishing or carnally knowing and abusing female child under twelve, sec. 4204.

Carnally knowing or abusing any virtuous female child between the ages of twelve and fourteen, sec. 4209.

Kidnapping, sec. 4221.

Enticing minors out of state for employment, sec. 4222.

Abduction of child under fourteen, sec. 4223.

Conspiring to abduct child under fourteen, sec. 4224.

Permitting unmarried female under age of eighteen in house of prostitution, sec. 4346.

Selling cigarettes to minors, sec. 4438.

Aiding minors to procure cigarettes, sec. 4439.

Selling or giving weapons to minors, sec. 4440.

Permitting child under twelve to use firearms, sec. 4441.
Permitting minor to enter barrooms, billiard rooms, and bowling alleys, sec. 4442.
Leaving child of seven or less confined and exposed to danger from fire, sec. 4443.
Marrying female child under fourteen, sec. 4444.
Separating child under six months old from mother, sec. 4445.
Failing to pay minors for certain work, sec. 4446.
Abandonment of wife and children, sec. 4448.
Failure to support wife and children, sec. 4450.
Giving intoxicants to unmarried minors under seventeen, sec. 4455.
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CHAPTER 91

COMMERCE AND BUSINESS IN STATE

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ART. 1. REGULATION AND INSPECTION

5068. County commissioners to appoint inspectors. The board of county commissioners may appoint for their county or any township thereof inspectors for any article of commerce the inspection of which is not otherwise provided for by law, who shall hold office for the term of five years after their employment.

Rev., ss. 4637, 4669.

5069. Vacancies in office of inspectors; assistants; principal liable. Whenever there shall be a vacancy in the office of inspector while the county commissioners are not in session, any three justices may appoint some other fit person until the next succeeding meeting of the board; or if any inspector shall be rendered incapable of performing his duty by sickness or other accident, he may, with the consent of three justices, appoint some other person as assistant during his sickness or other disability, which consent shall be certified under their hands and lodged with the clerk of the board of commissioners, and such assistant shall take the same oaths as inspectors; and the inspector shall be liable to the same fines and penalties for the assistant's misbehavior as for his own.

Rev., s. 4638; Code, s. 2989; R. C., c. 60, s. 9; 1784, c. 206, s. 3; 1793, c. 386; 1799, c. 539, s. 2; 1811, c. 807, s. 6; 1811, c. 812.

5070. Duties of inspectors of certain commodities. Every inspector of flaxseed, tar, pitch, and turpentine shall constantly attend at the places for which he shall be appointed, and shall provide an iron to brand any of the said commodities, bearing the name of the inspector and his place of residence, and shall find laborers, equally with the owners, to assist in weighing the several commodities he shall inspect and weigh; and also shall find and provide proper steelyards or scales of the lawful standard; and if any inspector shall neglect his duty, or brand or stamp any of the commodities contrary to this chapter, or brand any empty barrels, or lend his brand to any person, he shall forfeit and pay for every such offense twenty dollars; and for branding any empty barrel, or lending his brand, two hundred dollars; and every other person that shall brand, or procure to be branded, any cask or barrel otherwise than by the inspector or by his assistant

shall forfeit and pay for every offense the same fines and penalties as inspectors are by this section liable to pay for similar breaches of duty or misbehavior.

This section does not extend to the town of New Bern so far as it relates to tar, pitch, and turpentine.

Rev., ss. 4655, 4658; Code, ss. 3021, 3037; R. C., c. 60, s. 48; 1784, c. 206, s. 7.

5071. Bond of inspector; fees. The said inspector shall enter into bond in the sum of five hundred dollars, payable to the state of North Carolina, conditioned for the faithful performance of the duties of his office, which bond the board shall take; and he shall be entitled to such fees as may be prescribed by the board.

Rev., s. 4671; Code, s. 3053; R. C., c. 60, s. 76; 1848, c. 43, s. 3.

5072. Falsely acting as inspector. If any person, who is not a legal or sworn inspector of lumber or other articles, presume to act as such, he shall forfeit and pay one hundred dollars, and be guilty of a misdemeanor.

Rev., s. 3580; Code, s. 3046; R. C., c. 60, s. 69; 1824, c. 1254, s. 3.

5073. Penalty for sale without inspection. If any person shall sell any article of forage or provision, of which inspection is required in accordance with this article, without the same having been inspected as required, he shall, for every offense, forfeit and pay one hundred dollars.

Rev., s. 4672; Code, s. 3054; R. C., c. 60, s. 77; 1850, c. 74, s. 2.

5074. Penalty on master receiving without inspection. No master or commander of any vessel shall take on board any cask or barrel or other commodity, liable to inspection as aforesaid, without being inspected and branded as required, under the penalty of two hundred dollars for each offense.

This section does not extend to the town of New Bern so far as it relates to tar, pitch, and turpentine.

Rev., ss. 4657, 4658; Code, ss. 3036, 3037; R. C., c. 60, s. 59; 1784, c. 206, s. 6.

5075. Who to pay inspectors' fees; penalty for extortion. The fees of inspectors shall be paid by the purchaser or exporter of the articles inspected, and if any inspector shall receive any greater fees than are by law allowed, he shall forfeit and pay ten dollars for every offense to any person suing for the same.

Rev., s. 4673; Code, s. 3055; R. C., c. 60, s. 79; 1824, c. 1254, ss. 1, 2.

5076. Size of shingles. Shingles shall not be less than eighteen inches long, four inches broad, and five-eighths of an inch thick; should they be larger they shall not for that reason be considered unmerchantable.

Rev., s. 4659; Code, s. 3038; R. C., c. 60, s. 61; 1784, c. 206, ss. 13, 14.

5077. Merchantable planks and boards. Boards of plank shall be deemed merchantable, and passed by any inspector, that are free from splits not more than twelve inches long, have no edge less than half an inch thick, and as near as may be of an equal thickness at each end; and every board, plank, piece of scantling or other square timber, being marked with the number of more superficial feet than are contained therein shall be forfeited to the county for the use of the poor: Provided, no shingles, board, plank, or scantling shall be inspected unless required by the purchaser.

Rev., s. 4660; Code, s. 3039; R. C., c. 60, s. 62; 1784, c. 206, s. 14.

5078. Steam-mill lumber. All steam-mill lumber, not herein otherwise provided for, showing heart one-half the length, shall be merchantable; and no inspector, having a stated salary from the proprietor of a steam mill, shall inspect any timber brought to the mill unless by consent of the seller, under penalty of fifty dollars.

Rev., s. 4662; Code, s. 3042; R. C., c. 60, s. 65; 1828, c. 26.

5079. Measurement of tun and sawmill lumber. All tun and square timber and sawmill lumber at the several markets and mills in the state shall be measured by superficial or board measure; and any person who shall sell such timber by any other measure shall pay ten dollars for every offense.

Rev., s. 4663; Code, s. 3043; R. C., c. 60, s. 66.

5080. Shingles and lumber to be culled; inspector not to buy. All shingles, boards, plank, and scantling inspected shall be culled, and the refuse separated from the merchantable, except there be an agreement otherwise between the purchaser and seller.

No inspector shall purchase any cullings or other articles that do not pass inspection, upon pain of forfeiting one hundred dollars.

Rev., ss. 4664, 4665; Code, ss. 3044, 3045; R. C., ss. 67, 68; 1784, c. 206, s. 19; 1824, c. 1254, s. 4; 1830, c. 32.

5081. Firewood in towns. All firewood sold in incorporated towns shall be sold by the cord and not otherwise; and each cord shall contain eight feet in length, four feet in height and four feet in breadth; and shall be corded by the seller, under the penalty of two dollars for each offense, to the use of the informer.

Rev., s. 4667; Code, s. 3049; R. C., c. 60, s. 72; 1784, c. 211; 1889, c. 401.

5082. Gas and electric light bills to show reading of meter. It shall be the duty of all gas companies and electric light companies selling gas and electricity to the public to show, among other things, on all statements or bills rendered to consumers, the reading of the meter at the end of the preceding month, and the reading of the meter at the end of the current month, and the amount of electricity, in kilowatt hours, and of gas, in feet, consumed for the current month.

Any gas or electric light company failing to render bills or statements, as provided for in this section, shall be subject to a penalty of ten dollars for each violation of this section or failure to render such statements, recoverable before a justice of the peace by any person suing for the same; but this section shall not apply to bills and accounts rendered customers on flat rate contracts.

1915, c. 259.

5083. Sale of seed-cotton or peanuts. If any person shall buy, sell, deliver, or receive for a price, or for any reward whatever, any cotton in the seed where the quantity is less than what is usually baled, or any peanuts, and shall fail to enter upon a book to be kept by him for such purpose the date of such buying or receiving, the number of pounds in each lot, the person or persons from whom bought or received, the name of the owner of the land on which such cotton is raised, and the price paid for the same per pound, which book shall be open to inspection by the public at all business hours of the day, he shall be guilty of a misdemeanor, and upon conviction be punished by a fine not exceeding fifty dol-

lars or imprisoned not exceeding thirty days. In all prosecutions under this section it shall only be necessary for the state to allege and prove that the defendant bought or received the seed-cotton or peanuts as charged, and the burden shall be upon the defendant to show that the provisions of this section have been complied with.

Rev., s. 3812; 1887, c. 199; 1905, cc. 201, 523.

Similar statute held constitutional: *State v. Moore*, 104-714.

5084. Traveling seed-cotton buyers must report; failure a misdemeanor. Any person engaged in traveling from house to house or from place to place buying or trading for seed-cotton shall keep a correct record of the name and postoffice address of each person from whom he buys or with whom he trades for seed-cotton, together with the number of pounds he buys or trades for from each person and the amount paid in each case.

On or before the third day of each month such person shall file a sworn statement with the clerk of the superior court of the county in which he made such purchases or trades for seed-cotton, showing the name and postoffice address of each person from whom he bought or with whom he traded during the next preceding month, together with the amount paid and the number of pounds of such cotton received from each person.

Any person failing or refusing to comply with this article shall be guilty of a misdemeanor for each offense, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not more than thirty days.

1919, c. 43.

5085. Cotton weighing. If any weigher or purchaser of cotton shall make any deduction from the weight of any bag, bale, or package of lint cotton, for or on account of the draft, turn, or break of the scales, steelyards, or other implement used in weighing the same, or for any other cause except as herein allowed, the person so offending shall be guilty of a misdemeanor, and fined three hundred dollars or imprisoned, in the discretion of the court: Provided, that the weigher may make such proper deduction as shall be agreed on by him and the seller, or his agent, for water, dirt, or other foreign substance in or on such bag, bale, or package of cotton, or for other just cause.

Rev., s. 3816; Code, s. 1007; 1874-5, c. 58, ss. 1, 3.

5086. Cotton weigher failing to file oath a misdemeanor. Every public weigher of cotton shall, before entering on the duties of his office, make and subscribe the oath prescribed for cotton weighers, which, when made, shall be filed in the office of the register of deeds for the county in which the person acts as weigher, and said register shall make a note of the same, and any person acting as weigher without making and filing the oath shall be guilty of a misdemeanor, and shall be fined twenty-five dollars for every bag, bale, or package of cotton which he shall have unlawfully weighed before being qualified to do so.

Rev., s. 3815; Code, s. 1008; 1874-5, c. 58, s. 2.

5087. Shipping fruit or vegetables not having grower's or shipper's name stamped on receptacle a misdemeanor. Any person or persons, firm or corporation selling or offering for sale or consignment any barrel, crate, box, or other

case, package or receptacle containing any berries, fruit, melons, potatoes, vegetables, truck or produce of any kind whatsoever, to be shipped to any point within or without the state, without the true name of the grower or packer either written, printed, stamped or otherwise placed thereon in distinct and legible characters, shall be guilty of a misdemeanor and fined not exceeding fifty dollars or imprisoned not exceeding thirty days. This section shall not apply to railroads, express companies and other transportation companies selling or offering for sale for transportation or storage charges or any other charges accruing to said railroads, express companies or other transportation companies any barrel, crate, box, or other case, package or receptacle containing berries, fruit, melons, potatoes, vegetables, truck or produce.

1915, c. 193.

5088. Sale of oleomargarine without label a misdemeanor. If any person shall sell, keep for sale, or offer for sale any oleomargarine or butterine, without having securely affixed on each package, tub, or firkin thereof a label on which shall be printed in large roman type the chemical ingredients and the proportions thereof, he shall be guilty of a misdemeanor, and upon conviction shall be fined not less than fifty dollars or be imprisoned not exceeding thirty days, and for each subsequent offense be fined not less than two hundred dollars or imprisoned not less than six months, or both, in the discretion of the court. For the purposes of this section any article manufactured or compounded in imitation or semblance of butter, or which shall be composed of any ingredient in combination with butter, shall be deemed to be oleomargarine and butterine.

Rev., s. 3828; 1895, c. 106.

5089. Sale of adulterated turpentine misdemeanor. If any person shall adulterate or cause to be adulterated any spirits turpentine, or shall knowingly sell or offer for sale as pure spirits turpentine any adulterated spirits turpentine, he shall be guilty of a misdemeanor, and upon conviction shall be fined not less than fifty dollars or imprisoned for thirty days.

Rev., s. 3830; 1897, c. 482.

5090. Failure of junk dealers to keep record of purchases misdemeanor. Every person, firm, or corporation buying brass or copper, or any other metal, or any rubber, or leather and rubber belts and belting, as junk, shall keep a register and shall keep therein a true and accurate record of each purchase, showing the description of the article purchased, the name from whom purchased, the amount paid for the same, the date thereof, and also any and all marks or brands upon said metal, rubber, or leather and rubber belts and belting. The said register and the metal and rubber, and leather and rubber belts and belting purchased shall be at all times open to the inspection of the public. A failure to comply with these requirements or the making of a false entry concerning such metals, rubber, or leather, or rubber belts or belting shall constitute a misdemeanor. This act shall not apply to the counties of Anson, Caldwell, Davidson, Randolph, Robeson, or Buncombe.

1917, c. 46.

5091. Dealing in certain metals regulated; purchasing from minors; violations of section misdemeanor. Every person, firm, or corporation buying railroad

brasses, or any composition metal specially used in the operation of trains, or brasses, composition metal, or copper of the kind or quality used by manufacturing or power plants, shall keep a register and shall insert therein a true and accurate record of each purchase, showing the name of the person from whom purchased, the amount paid for the same, the date thereof, and also any and all marks or brands upon such metal. The register shall be at all times open to the inspection of the public. Any person or dealer buying or selling such metals without complying with this section shall be guilty of a misdemeanor; and any person making a false entry in such register shall be guilty of a misdemeanor. Every person, firm, or corporation who shall buy or receive any such metals from persons under twenty-one years old, or who shall buy or receive any such metals after the same have been broken up and the marks or brands obliterated, shall be guilty of a misdemeanor; and every person buying, receiving or selling, or offering for sale metals broken into small pieces, or so broken as to obliterate the marks or brands, shall be *prima facie* presumed to have received such metals knowing the same to have been stolen.

1907, c. 464; 1909, c. 855, s. 1.

5092. Local: Lumber in certain counties. The board of county commissioners of Bertie, Carteret, Craven, Cumberland, Harnett, Jones, Northampton, Pender, Pitt, Onslow, Sampson, and Swain counties, upon the petition of any three freeholders of a township, shall appoint one or more, not to exceed three, qualified electors of such township as inspectors and measurers of logs and timber in and for the county wherein said township is situate, who shall hold his office until the thirty-first day of the second December next after his appointment and qualification, or until his successor or successors may be qualified, whose duty it shall be, upon request of the purchaser or seller of any logs or timber sold within the township wherein such inspector resides, to measure and inspect the same and to furnish, if requested so to do, the purchaser and seller each with a certificate of the result of such measurement and inspection. Such inspector shall keep in a suitably bound book a record of all logs and timber inspected or measured by him, together with the marks or brands, if any, and the names of the purchaser and seller, the number of feet, and the date of such measurement and inspection, which record shall be open to the inspection of the public and preserved and delivered to his successors in office. Such inspector shall, before entering upon the duties of his office, take, subscribe, and file with the said board an oath of office, and give bond payable to the state of North Carolina in the sum of five hundred dollars, conditioned for the faithful performance of the duties of his office, such bond to be approved and filed as the bond of other county officers. No inspection or measurement of logs or timber in said counties by any person other than an officer created by this section shall be of any validity or binding force or effect in any sale of logs or timber. The inspector shall be allowed for his services five cents per thousand feet measured or inspected, to be paid one-half by each party to the sale.

Rev., s. 4636; 1891, c. 142, ss. 1, 2, 3, 4, 5; 1895 (Pr.), c. 229.

5093. Local: Sawmills near Wilmington. The board of commissioners of the county of New Hanover shall, at the meeting at which they appoint inspectors for the town of Wilmington, also appoint one inspector for each of the sawmills

in the vicinity of said town, for the inspection of lumber only; and if any such inspector shall fail, when called upon by the proprietors or their agents, promptly and faithfully to discharge his duties, he shall for every failure forfeit and pay to the party aggrieved fifty dollars.

Rev., s. 4661; Code, s. 3040; R. C., c. 60, s. 63.

5094. Local: Disputes about cooperage in Wilmington. In case the purchaser and seller cannot agree as to the amount to be allowed for extra cooperage and defective barrels in the town of Wilmington, any inspector of naval stores and provisions in the town, at the instance of either, shall establish the amount to be allowed therefor, and such estimate shall be conclusive; and if such inspector refuse to make the estimate when called on, he shall forfeit and pay twenty-five dollars to any person who will sue for the same.

Rev., s. 4666; Code, s. 3048; R. C., c. 60, s. 71; 1829, c. 50; 1842, c. 40.

5095. Local: Firewood in New Bern. The board of commissioners for the county of Craven may appoint one or more inspectors of firewood for the town of New Bern, who shall reside therein and inspect all such wood as may be carried to the town for sale; and before entering upon their duties they shall take the oaths and give the bonds required of other inspectors, and shall receive for inspecting each cord of wood four cents, to be paid by the purchaser.

Rev., s. 4668; Code, s. 3050; R. C., c. 68, s. 73; 1846, c. 198, ss. 1, 2, 3.

5096. Local: Cotton sales in Wilmington. All cotton sold in the town of Wilmington shall be weighed, under the penalty of one hundred dollars for any bale sold without being weighed by the proper officer. This not to apply to cotton bought elsewhere and brought to Wilmington for export. Cotton shall be weighed by the inspectors of flour and provisions, who have been or who may be, from time to time, appointed by the board of county commissioners of New Hanover. The board of county commissioners of said county shall, from time to time, fix the fee, not to exceed ten cents per bale, for the weighing of the aforesaid articles, and until said board shall determine said fee the inspector shall be entitled to receive the following fee, viz., for every bale of cotton weighed, ten cents.

Rev., ss. 4674, 4675, 4676; Code, ss. 3058, 3059, 3060; 1856-'7, c. 41.

5097. Failure of buyer to inspect cotton in certain counties. If any buyer of baled cotton shall fail to inspect all baled cotton when purchased and before the same is delivered, or shall make any deduction from the price agreed to be paid therefor on account of any inspection made after delivery of the same, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than fifty dollars or imprisoned not exceeding thirty days. This section shall apply only to the counties of Stanly, Cabarrus, Montgomery, Anson, Catawba, Richmond, and Rowan: Provided, this section shall not have the effect to prevent a deduction or rebate on the price agreed for fraudulent baling or packing of cotton or to prevent an indictment for false pretenses in the counties of Montgomery, Rowan, and Stanly.

Rev., s. 3811; 1891, c. 287; 1899, c. 320.

5098. Local: Sale of calves for veal. It shall be unlawful for any person or persons, firm, or corporation to buy or sell, or engage in the business of buying

and selling or shipping calves for veal under the age of six months, either dead or alive: Provided, that this act shall not apply to persons buying or selling heifer calves to be raised for milk cows, nor to bull calves for raising purposes or work stock.

Any person, firm, or corporation violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall pay a penalty of not less than fifteen dollars nor more than thirty dollars, or be imprisoned for not less than twenty nor more than thirty days, or both, in the discretion of the court, for each and every offense.

This act shall apply to the following counties only: Alamance, Alexander, Ashe, Avery, Burke, Caldwell, Cherokee, Clay, Franklin, Gaston, Graham, Lee (1917, c. 93, s. 1), Madison, McDowell, Mitchell, Robeson, Sampson, Wake, and Wilson.

Ex. Sess. 1913, c. 80; 1915, c. 2 (Cabarrus, Guilford, Hoke, Rowan, Moore, Warren), c. 155 (Durham); P. L. 1919, c. 159 (Lincoln county); P. L. 1917, c. 470 (Cleveland county); 1917, c. 299 (Henderson county).

NOTE.—For further local modifications in the counties mentioned in this note, see the statutes referred to: Alamance, P. L. 1917, c. 391; Alexander, P. L. 1917, c. 180; Durham, 1915, c. 155. For local legislation of like import, see Buncombe, P. L. 1919, c. 191; Surry, P. L. 1919, c. 151; Wilkes, P. L. 1919, c. 63.

5099. Failure of butchers to keep record misdemeanor. If any butcher shall fail to keep a book of registration and register the ear-mark, brand, or flesh-mark of all cattle, sheep, swine, or goats, and the name of the parties purchased from, in said registration, and the date of said purchase, which registration shall be open to the inspection of all persons, he shall be guilty of a misdemeanor, and upon conviction shall pay a fine of fifty dollars for each offense: Provided, this shall apply only to the counties of Rockingham, Bertie, Edgecombe, Halifax, Martin, Orange, Pitt, Wilson, Wayne, Jones, Warren, Johnston, Richmond, Northampton, Franklin, Craven, Chowan, Harnett, and Gates, and Warsaw township in Duplin county.

Rev., s. 3803; 1889, c. 318; 1895, c. 363; 1891, c. 38; 1891, c. 557; 1893, c. 116; 1903, c. 82; 1905, c. 31; 1909, c. 865, s. 1.

ART. 2. THRESHERS OF WHEAT

5100. Wheat thresher's license. It shall be the duty of any person, firm, or corporation who shall engage in the threshing of wheat for others in any county in the state to first secure a license from the county in which the threshing occurs: Provided, that securing of a license in one county shall be sufficient to allow the person, firm, or corporation to operate in any county of the state.

1919, c. 267, s. 1.

5101. Register of deeds issues license. It shall be the duty of the register of deeds of each of the several counties of the state to issue a license to engage in the threshing of wheat in that county to any person, firm, or corporation applying for same. Every license issued under the provisions of this article shall expire on the first day of November succeeding the date of the issue of such license.

1919, c. 267, s. 2.

5102. Reports to be made by wheat threshers; failure to report a misdemeanor. It shall be the duty of every person, firm, or corporation who shall engage in the threshing of wheat for others or themselves in any county of the state to keep a complete and accurate record of the amount of wheat threshed by such person, firm, or corporation, and to make, upon blanks to be furnished by the register of deeds of the county, report on or before the first day of November of each year, showing the amount of wheat threshed by said person, firm, or corporation in said county during the preceding year. A violation of the provisions of this section shall be deemed a misdemeanor and shall be punished by a fine of not exceeding twenty-five dollars: Provided, the register of deeds shall give thirty days notice to the licensee before indictment is made, and if licensee makes said report within said time no indictment shall be made.

1919, c. 267, s. 3.

5103. Register of deeds responsible for enforcement. It shall be the duty of the register of deeds of each of the several counties of the state to make diligent inquiry as to whether the provisions of the first preceding section of this article have been complied with, and, upon the failure of any person, firm, or corporation to comply with same, to swear out a warrant before some justice of the county, and the procedure thereon shall be as in other criminal cases.

1919, c. 267, s. 4.

5104. Reports made by register of deeds. It shall be the duty of the register of deeds of each of the several counties in the state, on or before the fifteenth day of November of each year, to submit, upon blanks to be furnished by the commissioner of agriculture, a report to the commissioner of agriculture showing the amount of wheat that has been threshed in the said county in the preceding year.

1919, c. 267, s. 5.

5105. Commissioner of agriculture to furnish blanks. It shall be the duty of the commissioner of agriculture to furnish to the register of deeds of the several counties of the state, on or before the first day of May in each year, a sufficient number of blank forms for threshers' licenses, threshers' grain reports, and registers' of deeds grain reports.

1919, c. 267, s. 6.

ART. 3. SALE OF WEAPONS

5106. Sale of certain weapons without permit forbidden. It shall be unlawful for any person, firm, or corporation in this state to sell, give away, or dispose of, or to purchase or receive, at any place within the state from any other place within or without the state, unless a license or permit therefor shall have first been obtained by such purchaser or receiver from the clerk of the superior court of the county in which such purchase, sale, or transfer is intended to be made, any pistol, so-called pump-gun, bowie knife, dirk, dagger or metallic knucks.

1919, c. 197, s. 1.

5107. Permit issued by clerk of court; form of permit. The clerks of the superior courts of any and all counties of this state are hereby authorized and di-

rected to issue to any person, firm, or corporation in any such county a license or permit to purchase or receive any weapon mentioned in this article from any person, firm, or corporation offering to sell or dispose of the same, which said license or permit shall be in the following form, to wit:

NORTH CAROLINA.

.....County.

I,, clerk of the Superior Court of said county, do hereby certify that.....whose place of residence is..... Street, in..... (or) in.....TownshipCounty, North Carolina, having this day satisfied me as to his, her (or) their good moral character, and that the possession of one of the weapons described is necessary for self-defense or the protection of the home, a license or permit is therefore hereby given said..... to purchase one pistol, (or).....from any person, firm or corporation authorized to dispose of the same.
(If any other weapon is named, strike out word pistol.)

This.....day of.....,19....

Clerk Superior Court.

1919, c. 197, s. 2.

5108. Applicant must be of good moral character; clerk's fee. Before the clerk of the superior court shall issue any such license or permit he shall fully satisfy himself by affidavits, oral evidence, or otherwise, as to the good moral character of the applicant therefor, and that such person, firm, or corporation requires the possession of the weapon mentioned for protection of the home. If said clerk shall not be so fully satisfied, he shall refuse to issue said license or permit: Provided, that nothing in this article shall apply to officers authorized by law to carry firearms. The clerk shall charge for his services upon issuing such license or permit a fee of fifty cents.

1919, c. 197, s. 3.

5109. Record of permits kept by clerk. The clerk of the superior court shall keep a book, to be provided by the board of commissioners of each county, in which he shall keep a record of all licenses or permits issued under this article, including the name, date, place of residence, age, former place of residence, etc., of each such person, firm, or corporation to whom or which a license or permit is issued.

1919, c. 197, s. 4.

5110. Dealer to keep record of sales. Every dealer in pistols, pistol cartridges and other weapons mentioned in this article shall keep an accurate record of all sales thereof, including the name, place of residence, date of sale, etc., of each person, firm, or corporation to whom or which such sales are made, which record shall be open to the inspection of any duly constituted state, county or police officer, within this state.

1919, c. 197, s. 5.

5111. Weapons to be listed for taxes. During the period of listing taxes in each year the owner or person in possession or having the custody or care of any weapon mentioned in this article is required to list the same specifically, as

is now required for listing personal property for taxes. Any person listing any such weapon for taxes shall be required to designate his place of residence, including local street address.

1919, c. 197, s. 6.

5112. Violation of article a misdemeanor. Any person, firm, or corporation violating any of the provisions of this article shall be guilty of a misdemeanor and fined or imprisoned in the discretion of the court.

1919, c. 197, s. 7.

ART. 4. MANUFACTURE AND SALE OF MATCHES

5113. Requirements for matches permitted to be sold. No person, association, or corporation shall manufacture, store, offer for sale, sell or otherwise dispose of or distribute white phosphorous, single-dipped, strike-anywhere matches of the type popularly known as "parlor matches"; nor manufacture, store, sell, offer for sale, or otherwise dispose of, or distribute, white phosphorous, double-dipped, strike-anywhere matches or any other type of double-dipped matches, unless the bulb or first dip of such match is composed of a so-called safety or inert composition, non-ignitable on an abrasive surface; nor manufacture, store, sell, or offer for sale, or otherwise dispose of or distribute matches which when packed in a carton of five hundred approximate capacity and placed in an oven maintained at a constant temperature of two hundred degrees F., will ignite in eight hours; nor manufacture, store, offer for sale, sell or otherwise dispose of, or distribute, blazer, or so-called wind matches, whether of the so-called safety or strike-anywhere type.

1915, c. 109, s. 12, I.

5114. Packages to be marked. No person, association, or corporation shall offer for sale, sell or otherwise dispose of, or distribute, any matches, unless the package or container in which such matches are packed bears, plainly marked on the outside thereof, the name of the manufacturer and the brand or trade-mark under which the matches were sold, disposed of, or distributed.

1915, c. 109, s. 12, II.

5115. Storage and packing regulated. No more than one case of each brand of matches of any type or manufacture shall be opened at any one time in the retail store where matches are sold or otherwise disposed of; nor shall loose boxes or paper-wrapped packages of matches be kept on shelves or stored in such retail stores at a height exceeding five feet from the floor; all matches when stored in warehouses must be kept only in properly secured cases, and not piled to a height exceeding ten feet from the floor; nor be stored within a horizontal distance of ten feet from any boiler, furnace, stove, or other like heating apparatus; nor within a horizontal distance of twenty-five feet from any explosive material kept or stored on the same floor. All matches shall be packed in boxes or suitable packages, containing not more than seven hundred matches in any one box or package: Provided, however, that when more than three hundred matches are packed in any one box or package the said matches shall be arranged in two nearly equal portions, the heads of the matches in the two portions shall be placed in opposite directions, and all boxes containing three hundred and fifty or more

matches shall have placed over the matches a center-holding or protecting strip, made of chip board, not less than one and one-quarter inches wide; said strip shall be flanged down to hold the matches in position when the box is nested into the shuck or withdrawn from it.

1915, c. 109, s. 12, II.

5116. Shipping containers regulated. All match boxes or packages shall be packed in strong shipping containers or cases; maximum number of match boxes or packages contained in any one shipping container or case shall not exceed the following number:

<i>Number of Boxes.</i>	<i>Nominal Number of Matches per Box.</i>
1/2 gross	700
1 gross	500
2 gross	400
3 gross	300
5 gross	200
12 gross	100
20 gross over 50 and under	100
25 gross under	50

No shipping container or case constructed of fiber board, corrugated fiber board, or wood, nailed or wirebound, shall exceed a weight, including its contents, of seventy-five pounds; and no lock-cornered wooden case containing matches shall have a weight, including its contents, exceeding eighty-five pounds; nor shall any other article or commodity be packed with matches in any such container or case; and all such containers and cases in which matches are packed shall have plainly marked on the outside of the container or case the words "Strike-anywhere Matches" or "Strike-on-the-Box Matches."

1915, c. 109, s. 12, III.

5117. Violation of article a misdemeanor. Any person, association, or corporation violating any of the provisions of this article shall be fined for the first offense not less than five dollars nor more than twenty-five dollars, and for each subsequent violation not less than twenty-five dollars.

1915, c. 109, s. 12, IV.

NOTE.—For regulation and inspection of various articles of commerce, see the chapter Agriculture. For inspection and packing of Fish, see chapter Fish and Fisheries. For Weights and Measures, see chapter Weights and Measures.

ART. 5. PUBLIC WAREHOUSES

5118. Who may become public warehousemen. Any person or any corporation organized under the laws of this state and whose charter authorizes it to engage in the business of a warehouseman, may become a public warehouseman and authorized to keep and maintain public warehouses for the storage of cotton, goods, wares, and other merchandise as hereinafter prescribed and upon giving the bond hereinafter required.

Rev., s. 3029; 1901, c. 678; 1919, c. 212.

5119. Bond required. Every person or every corporation so organized under the preceding section, except such as shall have a capital stock of not less than five thousand dollars, to become a public warehouseman shall give bond in a reliable bonding or surety company, or an individual bond with sufficient sureties, payable to the state of North Carolina, in an amount not less than ten thousand dollars, to be approved, filed with and recorded by the clerk of the superior court of the county in which the warehouse is located, for the faithful performance of the duties of a public warehouseman; but if such person or corporation has a capital stock of not less than five thousand dollars, then it shall not be required to give the bond mentioned in this section.

Rev., s. 3030; 1901, c. 678, s. 2; 1905, c. 540; 1908, c. 56; 1919, c. 212.

5120. Person injured may sue on bond. Whenever such warehouseman fails to perform any duty or violates any of the provisions of this chapter, any person injured by such failure or violation may bring an action in his name and to his own use in any court of competent jurisdiction on the bond of said warehouseman.

Rev., s. 3031; 1901, c. 678, s. 3.

Warehousemen are liable under the general law for damages caused by their negligence: *Motley v. Finishing Co.*, 124-232.

Where known to bailor at time of storage that bailee knew nothing about tobacco and had no experience in handling it, bailee will not be liable for want of skill and experience; but will be bound to use such ordinary care as a prudent man would exercise to guard against moisture in the structure of warehouse and location of tobacco: *Motley v. Finishing Co.*, 126-339.

While warehousemen are not insurers like common carriers, they are liable for damages, caused by their negligence, to articles stored with them: *Motley v. Warehouse Co.*, 122-347.

A provision in a charter of warehouse corporation to the effect that such corporation shall not be liable for loss or damages not provided for in its warehouse receipt or contract attempts to confer exclusive privileges, and is therefore unconstitutional and void: *Ibid.*

The measure of damages where property damaged while in the care of a storage or warehouse company is the difference between market value of property in its damaged condition and what it would have sold for if undamaged on the day of its return to the owner: *Ibid.*

As to when the liability of a railroad company changes from that of carrier to warehouseman, see *Poythress v. R. R.*, 148-391; *Bank v. R. R.*, 153-347.

5121. Insurance required; storage receipts. Every such warehouseman shall, when requested thereto in writing by a party placing property with it on storage, cause such property to be insured; every such warehouseman shall give to each person depositing property with it for storage a receipt therefor. All warehouse receipts issued by warehousemen complying with the provisions of this chapter shall be valid and binding in the hands of all bona fide holders for value without registration.

Rev., s. 3032; 1901, c. 678, s. 4; 1905, c. 540, s. 2.

For uniform warehouse receipts act, see chapter Warehouse Receipts.

5122. Books of account kept; open to inspection. Every such warehouseman shall keep a book in which shall be entered an account of all its transactions relating to warehousing, storing, and insuring cotton, goods, wares, and merchandise, and to the issuing of receipts therefor, which books shall be open to the inspection of any person actually interested in the property to which such entry relates.

Rev., s. 3035; 1901, c. 678, s. 7.

5123. Unlawful disposition of property stored. If any person unlawfully sells, pledges, lends, or in any other way disposes of or permits or is a party to the unlawful selling, pledging, lending, or other disposition of any goods, wares, merchandise, or anything deposited in a public warehouse without the authority of the party who deposited the same, he shall be punished by a fine not to exceed two thousand dollars and by imprisonment in the state's prison for not more than three years; but no officer, manager, or agent of such public warehouse shall be liable to the penalties provided in this section unless, with the intent to injure or defraud any person, he so sells, pledges, lends, or in any other way disposes of the same, or is a party to the selling, pledging, lending, or other disposition of any goods, wares, merchandise, article, or thing so deposited.

Rev., s. 3831; 1901, c. 678, s. 11.

NOTE.—For warehouse receipts, see chapter Warehouse Receipts.

ART. 6. LEAF TOBACCO WAREHOUSES

5124. Maximum warehouse charges. The charges and expenses of handling and selling leaf tobacco upon the floor of tobacco warehouses shall not exceed the following schedule of prices, viz.: For auction fees, fifteen cents on all piles of one hundred pounds or less, and twenty-five cents on all piles over one hundred pounds; for weighing and handling, ten cents per pile for all piles less than one hundred pounds, for all piles over one hundred pounds at the rate of ten cents per hundred pounds; for commissions on the gross sales of leaf tobacco in said warehouses, not to exceed two and one-half per centum.

Rev., s. 3042; 1895, c. 81.

5125. Oath of tobacco weigher. All leaf tobacco sold upon the floor of any tobacco warehouse shall first be weighed by some reliable person, who shall have first sworn and subscribed to the following oath, to wit: "I do solemnly swear (or affirm) that I will correctly and accurately weigh all tobacco offered for sale at the warehouse of, and correctly test and keep accurate the scales upon which the tobacco so offered for sale is weighed." Such oath shall be filed in the office of the clerk of the superior court of the county in which said warehouse is situated.

Rev., s. 3043; 1895, c. 81, s. 2.

5126. Warehouse proprietor to render bill of charges; penalty. The proprietor of each and every warehouse shall render to each seller of tobacco at his warehouse a bill plainly stating the amount charged for weighing and handling, the amounts charged for auction fees, and the commission charged on such sale, and it shall be unlawful for any other charges or fees to be made or accepted. For each and every violation of the provisions of this article a penalty of ten dollars may be recovered by any one injured thereby.

Rev., s. 3044; 1895, c. 81, ss. 3, 4.

NOTE.—Accounts of leaf tobacco sales to be kept and reported to commissioner of agriculture. See Agriculture, Art. 19, secs. 4926 et seq.

CHAPTER 92

CONFEDERATE HOMES AND PENSIONS

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ART. 1. SOLDIERS' HOME

5127. The soldiers' home association incorporated; powers. The persons now composing and constituting the corporation, created by chapter sixty of the private laws of one thousand eight hundred and ninety-one, together with their successors, shall be and remain a body politic and corporate, under the name and style of The Soldiers' Home Association, and by that name may sue and be sued, purchase, hold, and sell real and personal property and have all of the powers of a charitable corporation under the law, enabling them to establish, maintain, and govern a home for such deserving, needy Confederate soldiers as shall have served in any North Carolina command during the late war, or who shall have served in the Confederate army and shall be a bona fide citizen of the state. The corporation shall have power to buy, lease, or acquire real estate for the purposes of its incorporation, may solicit and receive donations in money or property, may invest its funds to constitute an endowment fund, and shall have a corporate existence of sixty years. It shall also have the power to solicit and receive donations for the purpose of aiding indigent Confederate soldiers at their homes in the various counties of North Carolina, and shall have all powers necessary to this end.

Rev., s. 5309; 1891 (Pr.), c. 60.

5128. Directors appointed; officers and powers. The powers conferred by this chapter shall be exercised by a board of directors consisting of seven members, of whom three shall be elected by the association and four shall be appointed by the governor of the state annually, and in case of a failure to elect or appoint, the members of the board shall hold their offices until their successors shall be elected or appointed. The board of directors shall elect from their number a president, and a secretary who shall not be from their number, and the treasurer of North Carolina shall be the treasurer of the association. The board of directors shall appoint such other officers, agents, or employees as it shall see fit, and shall prescribe the duties of such officers and employees. It shall establish rules and regulations for the maintenance and government of the home, and shall have entire control and management of it; it shall prescribe the rules for the admission of inmates and their discharge; it shall take whatever action may be desirable in reference to the collection and disbursement of subscriptions either to the home or to the needy veterans elsewhere in the state. The accounts of its officers and employees shall be duly audited and published. The superintendent may be allowed free transportation over any railroad in the state offering the same.

Rev., s. 5310; 1891 (Pr.), c. 60, s. 2; 1913, c. 126, s. 1.

5129. Lady managers appointed. The board of directors at their first meeting in each year shall appoint an advisory board of lady managers, consisting of one member from each congressional district, whose term of office shall be prescribed

by the board. The lady managers shall assist the directors in the management of the home as they may be requested to do, shall solicit contributions for the home, and generally shall use all the powers given to and perform all the duties required of them by the board of directors, who are hereby empowered to prescribe such duties and confer such powers.

Rev., s. 5311; 1891 (Pr.), c. 60, s. 3.

5130. Location of home. The tract of land lying east of and near the corporate limits of the city of Raleigh, known as Camp Russell, and formerly known as "Pettigrew Hospital," the property of the state, shall be and the same is hereby given to the association, to be held and used by them for the purposes of a soldiers' home, and for no other purpose, and when said land shall cease to be used for the benefit of the Confederate veterans the same shall revert and belong to the state. But if the board of directors shall deem it advisable to establish the home elsewhere, they shall have the power, by and with the consent of the council of state of North Carolina, to sell the said tract and reinvest in some other lot or tract of land, the title to which shall be taken in the name of the state, and which shall be held under the trust mentioned above.

Rev., s. 5312; 1891 (Pr.), c. 60, s. 4.

5131. Record of inmates kept. The directors shall cause to be kept a minute book of the home, in which full entries shall be kept concerning memorable incidents in the lives of its inmates. They shall also take steps to form a museum of Confederate relics and to perpetuate such historical records of the Confederate soldiers of North Carolina as they shall find it practicable to do.

Rev., s. 5313; 1891 (Pr.), c. 60, s. 6.

5132. Pensions for inmates of soldiers' home. A pension of twelve dollars per annum, payable in equal quarterly installments of three dollars each, on the first days of January, April, July, and October in each year, shall be paid to all inmates of the soldiers' home at Raleigh.

1909, c. 684; 1913, c. 126.

5133. Uniform provided for inmates. The board of directors of the soldiers' home are authorized and directed to purchase one suit or uniform of Confederate gray each year, if necessary, for the use and wear of each old soldier at said home; and when any old soldier shall leave the home or shall die, he may take said suit or uniform with him or may be buried in the same. The sum of one thousand dollars, annually, or so much thereof as may be necessary, is appropriated for such purpose.

1909, Resolution, p. 1356.

ART. 2. CONFEDERATE WOMAN'S HOME

5134. Incorporation and powers of association. Julian S. Carr, John H. Thorp, Robert H. Ricks, Robert H. Bradley, E. R. Preston, Simon B. Taylor, Joseph F. Spainhour, A. D. McGill, M. Leslie Davis, T. T. Thorne, and W. A. Grier, together with their successors in office, are constituted a body politic and corporate under

the name and style of Confederate Woman's Home Association, and by that name may sue and be sued, purchase, hold and sell real and personal property, and have all the powers and enjoy all the privileges of a charitable corporation under the law enabling them to establish, maintain, and govern a home for the deserving wives and widows of North Carolina Confederate soldiers and other worthy dependent women of the Confederacy who are bona fide residents of this state.

The corporation may solicit and receive donations in money or property for the purposes of site on which to erect its buildings, to equip, furnish, and maintain it, or for any other purpose whatsoever, may invest its funds to constitute an endowment fund, and shall have a corporate existence for forty years. It shall also have the power to solicit and receive donations for the purpose of aiding indigent Confederate women at their homes in the various counties of the state, and shall have all powers necessary to this end.

1913, c. 62, s. 1.

5135. Board of directors appointed; officers and duties. The powers conferred by this article shall be exercised by a board of directors, consisting of seven members, to be appointed by the governor of the state and who shall hold office for the term of two years, and in case of a failure to appoint, the members of such board of directors shall hold their offices until their successors are appointed. The board of directors shall elect a president and a secretary, and the treasurer of North Carolina shall be the treasurer of the Woman's Confederate Home Association. The board of directors shall appoint such other officers, agents, or employees as they shall see fit, and prescribe the duties of such officers and employees; establish rules and regulations for the maintenance and government of the home, and have entire control and management of it; prescribe the rules for the admission of the inmates and their discharge, and take whatever action may be desirable in reference to the collection and disbursement of subscriptions, either to the home or to the needy Confederate women elsewhere in the state. The accounts of the officers and employees shall be duly audited and published and report thereof made as now required by law from the other state institutions.

1913, c. 62, s. 2.

5136. Location of home. The board of directors shall locate the Confederate woman's home at such place in North Carolina as they shall deem proper, and it shall be located in or near that town or city offering the largest inducement having due regard to the desirability and suitability for the location of the home.

1913, c. 62, s. 2.

5137. Advisory board of lady managers. Mrs. Hunter Smith, Mrs. N. B. Mann, Mrs. T. L. Costner, Mrs. R. F. Dalton, Mrs. F. A. Woodard, Mrs. W. H. Mendenhall, Mrs. E. C. Chambers, Mrs. Charles S. Wallace, Mrs. M. O. Winstead, Mrs. Marshall Williams are appointed an advisory board of lady managers for a term of two years, whose duties it shall be to assist the directors in the equipment and management of the home as they may be requested to do, shall solicit contributions for the home and generally shall use all the powers given to and perform all the duties required of them by the board of directors. The successors in office of said lady managers shall be selected one from each congressional dis-

trict in the state. All vacancies occurring in said advisory board, whether from expiration of office or otherwise, shall, subject to the limitations herein set out respecting the way of selection, be filled by the board of directors.

1913, c. 62, s. 3.

5138. Reversion of property. If the land on which the said home shall be located or used in connection therewith shall at any time cease to be used for that purpose, or for the use and benefit of the dependent wives and widows of the Confederate soldiers as herein specified, or other worthy indigent Confederate women of this state, the same shall revert to the person or persons donating the same, if it has been acquired entirely by donations; otherwise, it shall revert to the state; but in all cases of nonuser for the said purpose, the buildings thereon, the furniture and equipment generally of every nature, shall revert and belong to the state.

1913, c. 62, s. 4.

5139. Compensation of directors. The directors provided for in this article shall be entitled to their actual expenses incurred in attending the meetings of the board of directors since their appointment, and also in attending future meetings of the board, the same to be paid out of the funds of the Confederate woman's home.

1915, c. 206.

5140. Appropriation for building and maintenance. To build and erect the Confederate woman's home and its necessary outhouses, and to provide for such system of water, lights and sanitation as the board of directors may deem best, the sum of ten thousand dollars is hereby appropriated. Appropriations made to the Confederate woman's home shall be paid to the treasurer of the association, the appropriation for building and erection to be by him disbursed under the orders of the board of directors, and the appropriations for maintenance and support to be paid quarterly under the orders of the board of directors. A report of the receipts and disbursements and the general affairs of the home shall be annually made to the governor of the state, to be by him laid before the general assembly at its biennial session.

1913, c. 62, s. 5.

NOTE.—See Acts 1915, c. 151; 1917, c. 205, as to special appropriations.

ART. 3. PENSIONS

Part 1. Pension Boards

5141. State board. The governor, attorney-general, and auditor shall be constituted a state board of pensions, which shall examine each application for a pension, and for this purpose it may take other testimony than that sent up by the county boards. Such applications as are approved by the state board shall be paid by the treasurer upon the warrant of the auditor.

Rev., s. 4984; 1903, c. 273, s. 5; 1907, c. 674, s. 5.

5142. State board may make rules. The state board of pensions is hereby empowered to prescribe rules and regulations for the more certainly carrying into effect this article according to its true intent and purpose.

Rev., s. 4986; 1903, c. 273, s. 17; 1907, c. 674, s. 19.

5143. Auditor to send list of pensioners to clerk; publication of list. The auditor shall, as soon as the same is ascertained, transmit to the clerks of the superior court of the several counties a correct list of the pensioners, with their post-offices, as allowed by the state board of pensions. The auditor may have printed once in each two years, but not oftener, a list of the pensioners on the pension roll, providing on each biennial list published space for correcting the list for the years in which it is not printed.

Rev., s. 4985; 1903, c. 273, s. 15; 1907, c. 674, s. 15; 1915, c. 62, s. 4.

5144. County board. The clerk of the superior court, together with three reputable ex-Confederate soldiers or sons of ex-Confederate soldiers, to be appointed by the state auditor, shall constitute a county board of pensions for their county.

Rev., s. 4987; 1903, c. 273, s. 5; 1907, c. 674, s. 5; 1917, c. 97.

NOTE.—For compensation of county pension board, see chapter on Salaries and Fees, sec. 3913.

5145. Examination and classification by county board. All persons entitled to pensions under this article, not now drawing pensions, shall appear before the county board of pensions on or before the first Monday in July of each year, for examination and classification in compliance with the provisions of this article: Provided, that all such as are unable to attend shall present a certificate from a credible physician, living and practicing medicine in the community in which the applicant resides, that the applicant is unable to attend.

Rev., s. 4988; 1903, c. 273, s. 2; 1907, c. 674, s. 2.

5146. Pension roll revised annually. On the first Monday of July of each year the pension board of each county shall revise and purge the pension roll of the county, first giving written notice of ten days to the pensioner who is alleged not to be rightfully on the state pension roll, to show cause why his name should not be stricken from the pension list, and the board shall meet another day to consider the subject of purging the list.

Rev., s. 4989; 1903, c. 273, s. 6; 1907, c. 674, s. 6.

Part 2. Persons Entitled to Pensions; Classification and Amount

5147. Persons disabled in militia service; their widows and orphans. Every person who may have been disabled by wounds in the militia service of the state, or rendered incapable thereby of procuring subsistence for himself and family, and the widows and orphans of such persons who may have died from such wounds, or from disease contracted in such service, shall be entitled to pensions as hereinafter provided for Confederate soldiers.

Rev., s. 4990; Code, s. 3472; R. C., c. 84.

5148. Blind or maimed Confederate soldiers. All ex-Confederate soldiers and sailors who have become totally blind since the war, or who lost their sight or both hands or feet, or one arm and one leg, in the Confederate service, shall receive from the public treasury one hundred and twenty dollars a year.

Rev., s. 4991; 1901, c. 332, s. 5; 1899, c. 619; 1907, c. 60.

5149. Clerk to send list of blind and disabled soldiers to governor; auditor to issue warrant. The clerk of the superior court shall, under his seal of office,

certify to the governor the name and the number of the soldiers examined in his county who are blind and maimed, or who have become paralyzed and are totally disabled by reason thereof; upon such certificate the auditor, with the approval of the governor, is authorized to issue his warrant to the treasurer to pay the sum of one hundred and twenty dollars annually for each blind and maimed person and each person paralyzed and disabled by reason thereof, named in the certificate, and the clerk shall pay out such money monthly to the persons entitled to the same.

Rev., s. 4992; Code, s. 3479; 1879, c. 193, s. 4; 1883, c. 341; 1917, c. 266.

5150. Classification of pensions for soldiers and widows. There shall be paid out of the treasury of the state, on the warrant of the auditor, to every person who has been for twelve months immediately preceding his application for pension a bona fide resident of the state, and who is incapacitated for manual labor and was a soldier or a sailor in the service of the Confederate States of America, during the war between the states, and to the widow of any deceased officer, soldier, or sailor who was in the service of the Confederate States of America during the war between the states, if such widow was married to such soldier or sailor before the first day of January, one thousand eight hundred and sixty-eight, and, if she has married again, is a widow at the date of her application, the following sums annually according to the degree of disability ascertained by the following grades:

1. To such as have received a wound which renders them totally incompetent to perform manual labor in the ordinary vocations of life, and to all blind Confederate widows who are on the pension roll, one hundred dollars.

2. To such as have lost a leg above the knee or an arm above the elbow, ninety dollars.

3. To such as have lost a foot or a leg below the knee, or a hand or an arm below the elbow, or have a leg or an arm utterly useless by reason of a wound or permanent injury, seventy dollars.

4. To such as have lost an eye, and to the widows and all other soldiers who are now disabled from any cause to perform manual labor, sixty dollars.

Rev., s. 4993; 1903, c. 273, s. 1; 1905, c. 358; 1907, c. 674, s. 1; 1909, c. 822; 1915, cc. 29, 94; 1917, c. 204, s. 1; 1919, c. 227.

5151. Persons not entitled to pensions. No person shall be entitled to receive the benefits of this article—

1. Who is an inmate of the soldiers' home at Raleigh;

2. Who is confined in an asylum;

3. Who receives a pension from any other state or from the United States;

4. Who holds a national, state, or county office which pays annually in salary or fees the sum of three hundred dollars;

5. Who was a deserter, or the widow of such deserter; but no soldier who has been honorably discharged or who was in service at the surrender shall be considered a deserter in the meaning of this section;

6. Who is receiving aid from the state under any act providing for the relief of soldiers who are blind or maimed;

7. Who owns in his own right, or in the right of his wife, property whose tax valuation exceeds five hundred dollars, or who, having owned property in excess of five hundred dollars, has disposed of the same by gift or voluntary conveyance to his wife, child, next of kin, or to any other person since the eleventh day of March, one thousand eight hundred and eighty-five: Provided, that the county board of pensions may place upon the pension roll, in the classes to which they would otherwise belong, any Confederate soldier, sailor, or widow disqualified by the provisions of this section, who may appear to be unable to earn a living from property valued as much as five hundred dollars or more for taxation, and who may appear to the board, from special circumstances, worthy to be placed upon the pension roll.

Rev., s. 4994; 1899, c. 605, s. 3; 1903, c. 273, ss. 3, 4, 9, 10; 1905, c. 408; 1907, c. 674, ss. 3, 4, 9, 10.

Part 3. Application for Pensions

5152. Forms provided by auditor. The auditor of the state shall provide a form of application according to the terms of this article, and have the same printed and sent to the clerks of the superior court of the several counties of the state for the use of applicants.

Rev., s. 4995; 1903, c. 273, s. 11; 1907, c. 674, s. 11.

5153. Application by person or guardian. No soldier, officer, sailor, or widow shall be entitled to the benefits of this chapter except upon his or her own application, or, in case he or she is insane, upon the application of his or her guardian or receiver.

Rev., s. 4996; 1903, c. 273, s. 9; 1907, c. 674, s. 9.

5154. Application filed with clerk; requirements. Before any officer, soldier, or sailor, not now receiving a pension, shall receive any part of the annual appropriation made for pensions he shall, on or before the first Monday in July of every year, file with the superior court clerk of the county wherein he resides an application for relief, setting forth in detail the company and regiment or battalion in which he served at the time of receiving the wound, the time and place of receiving the wound; whether he is holding an office in the state, United States, or county from which he is receiving the sum of three hundred dollars in fees or salary; whether he is worth in his own right, or in the right of his wife, property at its assessed value for taxation to the amount of five hundred dollars; whether he is receiving any aid from the state of North Carolina under any other statute providing for the relief of the maimed and blind soldiers of the state; and whether he is a citizen of the state of North Carolina. Such application shall be verified by the oath of the applicant, made before any one empowered to administer oaths, and shall be accompanied by the affidavit of one or more credible witnesses, stating that he or they verily believe the applicant to be the identical person named in the application and that the facts stated in the application are true; and when the county board of pensions is satisfied with the justice of the claim made by the applicant they shall so certify the same to the auditor of the state under their hands and the seal of the superior court of their county, which shall be impressed by the clerk of the superior court of the county; and there shall

accompany the certificate so sent to the auditor the application, affidavit, and proofs taken by them, which papers shall be kept on file in the auditor's office. Clerks of the superior courts shall receive no fees whatsoever for services herein required of them.

Rev., s. 4997; 1903, c. 273, ss. 5, 6; 1907, c. 674, s. 5.

5155. Clerk to forward application to auditor. It shall be the duty of the clerk of the superior court of the county where the application is filed to forward to the auditor of the state, immediately after the certificate required by the next preceding section is made and before the first Monday in August in each year, the application and proofs and certificates, and upon the state board of pensions being satisfied of the truth and genuineness of the application, the auditor shall issue his warrant on the state treasurer for the same.

Rev., s. 4998; 1903, c. 273, s. 7; 1907, c. 674, s. 7.

5156. Certificate of clerk instead of new application. After an application has once been passed upon and allowed by the county and state boards, it shall be necessary only for the applicant to file with the auditor of the state a certificate from the clerk of the superior court of the county in which his application was originally filed, setting forth that the applicant is the identical person named in the original application which is on file in the auditor's office, and that the applicant is alive, but still disabled, and a citizen of this state, and still entitled to the benefits of this article, which certificate may be passed upon by the state board, upon suggestions of fraud, before the auditor draws his warrant upon such certificate.

Rev., s. 4999; 1903, c. 273, s. 8; 1907, c. 674, s. 8.

Part 4. Pension Warrants

5157. Auditor to issue warrants and send to clerk; duties of clerk. The state auditor shall transmit to the clerks of the superior court of the various counties warrants for pensioners for one-half of the yearly pensions between the first and fifteenth of June, and for one-half the yearly pensions between the first and fifteenth of December of each year. It shall be the duty of the clerk of the superior court to acknowledge to the auditor the receipt of such warrants by the next mail after their receipt, to deliver or mail forthwith to each pensioner in his county his warrant, and to post in the courthouse a list of the pensioners to whom he has mailed or delivered warrants.

Rev., s. 5000; 1903, c. 273, ss. 9, 14; 1907, c. 274, ss. 9, 14, 16; 1919, c. 227, s. 2.

A pension to become payable in the future is not assignable: *Gill v. Dixon*, 131-87.

5158. Warrant payable to pensioner; indorsement. The auditor shall issue his warrant payable to the pensioner, or order, and such warrant shall not be paid by the treasurer without the indorsement of the payee or his duly appointed attorney in fact, specially authorized to make such indorsement; and if such indorsement is made by the payee it shall be attested by the official signature of the clerk of the superior court or some justice of the peace or notary public of the county in which such payee resides, and if such indorsement is made by

the attorney in fact of the payee, a copy of the power of attorney, duly attested by the clerk of the superior court or a justice of the peace or notary public of the county in which the payee resides, shall be attached to the warrant.

Rev., s. 5001; 1903, c. 273, s. 13; 1907, c. 674, s. 13.

5159. Payment of amount due up to death of pensioner. It shall be lawful for the treasurer to pay any warrant issued by the auditor to any person drawing a pension under the laws of this state for any balance due such pensioner from the time of the last payment up to the time of his death. The warrant shall be accompanied by an affidavit, made before an officer having a seal of office, by a reputable person, to the effect that the pensioner is dead, and that the warrant is issued as a balance due the pensioner up to the time of his death.

Rev., s. 5002; 1895, c. 228.

5160. Payment to widow or next of kin upon death of pensioner. Whenever a Confederate soldier, who is now on the pension list, shall die after the check, warrant, or allotment has been issued or made in his favor and before its delivery to him, it shall be lawful for the clerk of the superior court of the county in which such soldier lived to pay the check or warrant to the widow or next of kin of such pensioner, and the indorsement of the widow or next of kin shall be a valid indorsement of such check or warrant.

1911, c. 198, s. 1; 1907, c. 674, s. 16.

5161. Pension paid to widow for one year. All pensions due to Confederate soldiers shall be paid to their widows for a period of one year after the death of any such pensioner: Provided, that the amount paid shall not exceed a widow's pension as prescribed by law.

1913, c. 128, s. 1; 1915, c. 212.

Part 5. Funds Provided for Pensions

5162. State pension tax. The auditor shall provide a column on the tax list for each year, to be called pensions for disabled Confederate soldiers, sailors, and widows. This tax shall be collected and paid into the treasury by the sheriffs as are other state taxes.

Rev., s. 5003; 1903, c. 273, s. 18; 1907, c. 674, s. 20.

See *Bd. of Education v. Comrs.*, 113-379; *School Directors v. Comrs.*, 127-263.

5163. Limit and distribution of appropriation. The state auditor is authorized, empowered, and directed to apportion, distribute, and divide the money appropriated by the state for pensions, and to issue warrants to the several pensioners pro rata in their respective grades, so that the entire annual appropriation shall be paid each year to the pensioners, notwithstanding the amounts so paid may be in excess of the amounts fixed by this article for the several grades: Provided, that the total appropriation for this purpose shall not exceed the sum of six hundred and fifty thousand dollars annually.

All moneys provided or appropriated in any one year for the ex-Confederate soldiers, sailors or widows, not paid out to them in any one year shall revert to the pension fund of the state, and shall be paid out to them in the next year, in the class to which they belong.

Rev., s. 5004; 1903, c. 273, ss. 1, 19; 1905, c. 358, s. 2; 1907, c. 674, ss. 1, 21; 1909, c. 779, s. 2; 1911, c. 206, s. 1; 1917, cc. 164, 204, s. 2; 1919, cc. 220, 229.

5164. County tax for pensions. 1. *Levy authorized.* The county commissioners of each county in the state are authorized and empowered, if in their discretion such levy is deemed advisable, to levy for each year, at the same time and in the same manner as the levy of other county taxes, a special tax not exceeding two cents on the hundred dollars valuation of property and six cents on each taxable poll, the constitutional equation between the property and poll being observed each year, for the purpose of increasing the pensions of Confederate soldiers and widows.

2. *Tax collected and accounted for.* Such tax shall be collected and accounted for by the sheriff or other tax collector in the same manner and under the same penalties as other taxes levied for the county, and the net proceeds thereof shall be applied each year to increase pro rata the pensions of such persons as stand upon the Confederate pension roll of the county for the year in which the tax is levied.

3. *Reports made.* The amount collected and disbursed under this section shall be reported by the county treasurer or other disbursing officer of the county to the state treasurer on or before the first day of June in each year, and the state treasurer's report shall show in a separate column the amount paid by each county annually under this section.

1909, c. 617.

NOTE.—For special tax for pensions in Cumberland county, see 1907, c. 555.

Part 6. Miscellaneous Provisions

5165. Officer failing to perform duty. Any officer or other person who shall neglect or refuse to discharge the duties imposed upon him by this article shall be guilty of a misdemeanor, and upon conviction thereof in the superior court shall be fined or imprisoned at the discretion of the court.

Rev., s. 3593; 1889, c. 198, s. 15; 1907, c. 674, s. 18.

5166. Speculating in pension claims prohibited. Any person who shall speculate or purchase for a less sum than that to which each may be entitled the claims of any soldier or sailor, or widow of a deceased soldier or sailor, allowed under the provisions of this article, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the court.

Rev., s. 3732; 1885, c. 214, s. 12; 1903, c. 273, s. 12; 1907, c. 674, s. 12.

It seems that this section does not authorize the assignment of a pension payable in the future: *Gill v. Dixon*, 131-87.

5167. County to pay burial expense of soldier or widow. Whenever in any county of this state a Confederate pensioner on the pension roll of the county or the widow of a Confederate soldier shall die, it shall be the duty of the board of commissioners of such county, upon the certificate of such fact by the clerk of the superior court, and recommendation of the chairman of the pension board of the county, to order the payment out of the general fund of the county of a sum not exceeding twenty dollars to be applied toward the defraying of the burial expenses of such deceased pensioner or widow.

1908, c. 37; 1911, c. 194.

The expense is to be paid by the county in which the pensioner was enrolled: *Hannah v. Comrs.*, 176-395.

5168. Certain ex-Confederate soldiers allowed to peddle without license. All ex-Confederate soldiers who are without means of support other than their manual labor and who are incapacitated to perform manual labor for any reason other than by their vicious habits, and now citizens of this state, shall be allowed to peddle drugs, goods, wares, and merchandise in any of the counties of this state without a license therefor. Before any soldier shall be entitled to the benefits of this chapter he shall make application to the county board of pensions of the county of which he is a resident and show to the satisfaction of the county board of pensions that he is entitled to the same by having served in the Confederate army or navy during the war between the states, and that he is incapacitated to perform manual labor, and does not own property the tax valuation of which exceeds the sum of five hundred dollars in his own name or in the name of his wife, deeded to her by him since the first day of March, one thousand nine hundred and two.

Rev., s. 5005; 1903, c. 530.

NOTE.—For exemption from jury duty, see Jurors.

For exemption from tax as peddlers, see *Smith v. Wilkins*, 164-135.

CHAPTER 93

CO-OPERATIVE ORGANIZATIONS

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SUBCHAPTER I. BUILDING AND LOAN ASSOCIATIONS

ART. 1. ORGANIZATION

5169. Application of term. The term “building and loan association,” as used in this subchapter, shall apply to and include all corporations, companies, societies, or associations organized for the purpose of making loans to its members only, and of enabling its members to acquire real estate, make improvements thereon and remove incumbrances therefrom by the payment of money in periodical installments or principal sums, and for the accumulation of a fund to be returned to members who do not obtain advances for such purposes. It shall be unlawful for any corporation, company, society, or association doing business in this state not so conducted to use in its corporate name the term “building and loan association” or “building association,” or in any manner or device to hold themselves out to the public as a building and loan association.

Rev., s. 3881; 1905, c. 435, s. 16.

5170. Method of incorporation; powers. It shall be lawful for any persons in any city, town, or county of this state, under any name by them to be assumed, to associate for the purpose of organizing and establishing a homestead and building and loan association, and, being so associated, they shall, on complying with this subchapter, be a body politic and corporate, and as such be capable in law to hold and dispose of property, both real and personal; may have and use a common seal; may choose a presiding and other officers; may enact by-laws for the regulation of the affairs of such corporation, and compel the due observance of the same by fines and penalties; may sue and be sued, plead and be impleaded, answer and be answered in any court in this state, and do all acts necessary for the well ordering and good government of the affairs of such corporation, and shall exercise all and singular the powers incident to bodies politic and corporate: Provided, that before any such corporation shall be entitled to the privileges of this subchapter it shall file with the clerk of the superior court of the county where such corporation is designed to act a copy of the certificate of incorporation of such corporation, signed by at least seven members, to be recorded in the office of such clerk, and shall pay a tax of twenty-five dollars to the clerk, which

tax shall be paid over by the clerk to the treasurer of the county, to the use of the school fund of the county. The clerk shall certify a copy of the charter to the insurance commissioner.

Rev., s. 3877; 1905, c. 435, s. 1.

Capital stock of building and loan association is property, and hence is taxable according to uniform ad valorem rule: Loan Assn. v. Comrs., 115-410.

The imposing by the state of a license tax on building and loan associations, and forbidding counties and other municipalities to impose any other license tax or fee, does not exempt capital stock of such associations from state and county taxation ad valorem: Loan Assn. v. Comrs., 115-410.

5171. Amendments to certificate. Any addition, alteration, or amendment of the certificate of incorporation of any such corporation shall be signed, certified, and recorded as is provided in the preceding section.

Rev., s. 3878; 1905, c. 435, s. 2.

5172. Form of certificate. Substantially the following form shall be used by associations to be formed under this chapter:

CERTIFICATE OF INCORPORATION

This is to certify that we, the undersigned citizens of the state of North Carolina, hereby associate ourselves into a building and loan association under and by virtue of the provisions of subchapter I, entitled Building and Loan Associations, of chapter 93 of the Consolidated Statutes of North Carolina, and by this certificate do set forth:

- First. The name of said association is to be
- Second. The location where its business is to be transacted is in the of in the county of and state of North Carolina, and the principal office of said corporation is to be at No., street, in the of aforesaid.
- Third. The object for which said association is formed is to enable the subscribers hereto to assist each other, and all who may become associated with them, in making loans to its members only, and to enable them to acquire real estate, making improvements thereon and removing incumbrances therefrom by the payment of periodical installments, and to accumulate a fund, to be paid by its members who do not obtain loans for the purposes aforesaid when the funds of said association shall amount to the sum of dollars per share of the first and subsequent classes or series.
- Fourth. The amount fixed as the value of each share, when matured or full paid, is to be dollars. The number of shares to be subscribed before said association shall begin business shall be The maximum number of shares in this association at any one time to be in force shall be The number of shares subscribed for by the incorporators is, and the number of shares subscribed for by each of them is as follows:

Name	Number of Shares
.....
.....
.....
.....
.....

In witness whereof, we have hereto set our hands and seals, the day of, A. D. 19....

..... (Seal.)

..... (Seal.)

..... (Seal.)

..... (Seal.)

..... (Seal.)

..... (Seal.)

..... (Seal.)

Signed, sealed, and delivered in the presence of.....

Rev., s. 3879; 1905, c. 435, s. 27.

5173. When to begin business. Upon filing the certificate of incorporation with the clerk of the superior court of the county where the principal office of the corporation is located, and with the insurance commissioner, the company shall become a body politic and corporate, and shall be authorized to begin business, when licensed by the insurance commissioner.

Rev., s. 3880; Code, s. 2297; 1907, c. 959, s. 1.

5174. Chapter on corporations applicable. All of the provisions of law relating to private corporations, and particularly those enumerated in the chapter entitled Corporations, not inconsistent with this subchapter, or with the business of building and loan associations, shall be applicable to building and loan associations.

Rev., s. 3882.

5175. Charters validated. The charters of all building and loan associations heretofore organized are hereby in all respects validated and confirmed, and all such associations shall have the powers and privileges of associations formed under this subchapter.

Rev., s. 3883; 1905, c. 435, s. 27.

ART. 2. SHARES AND SHAREHOLDERS

5176. Number of shares and entrance fee prescribed. Any corporation created under and by virtue of this subchapter shall have power to declare in its certificate of incorporation the maximum number of shares of which the corporation shall consist to be in force at any one time, the par value of the same, to prescribe the entrance fee per share to be paid by each shareholder at the time of subscribing, to regulate the amount of the installments to be paid on each share, and the time at which the same shall be paid and payable.

Rev., s. 3887; 1905, c. 435, s. 3.

5177. Different classes of shares; guaranteed dividends. Every building and loan association doing business in this state shall be authorized to issue as many series or classes and kinds of shares and at such stated periods as may be provided for in its charter or by-laws: Provided, the guaranteed dividends on paid-up or guaranteed stock shall be less than the association is earning, and may have the right to share in the dividends between the guaranteed and the earned per centum.

Rev., s. 3889; 1905, c. 435, s. 6; 1907, c. 959, s. 3; 1919, c. 179, s. 3.

5178. Certificate issued and payment enforced. Any such corporation shall have power to issue to each member a certificate of the shares held by him, and to enforce the payment of all installments and other dues due to the corporation from the members or shareholders by such fines and forfeitures as the corporation may from time to time provide in the by-laws or its certificate of incorporation.

Rev., s. 3888; 1905, c. 435, s. 4.

5179. New members admitted. Any person applying for membership or shares in any corporation after the end of a month from the date of its incorporation may be required to pay, on subscribing, such sums or assessments as may from

time to time be fixed and assessed in the manner provided by the corporation, in order to place such new member or shareholder on like footing with the original members and others holding shares at the time of such application.

Rev., s. 3886; 1905, c. 435, s. 5.

5180. Shareholders equally liable. All shareholders of the serial plan shall occupy the same relative position as to debts, losses, and profits of the association; but this provision shall not prevent any association from receiving dues in advance, allowing such a rate of interest for the anticipated payments of dues as may be agreed on by the directors. No series or class of stock shall be paid off until fully matured.

Rev., s. 3884; 1905, c. 435, s. 7; 1907, c. 959, s. 2; 1919, c. 179, s. 2.

On insolvency, all persons having stock are corporators, and members indebted are debtors: *Strauss v. Loan Assn.*, 117-308, 118-556; *B. and L. A. v. Blalock*, 160-490.

Married woman settles with insolvent building and loan association as others: *Meares v. Duncan*, 123-203.

5181. Married women and minors as shareholders. Married women and minors of the age of twelve years and upwards are authorized and empowered to become shareholders in and buy, sell, hold, pay dues on, withdraw, transfer, and otherwise deal in the shares in any such association in the same manner and with the same powers, rights, and liabilities, force and effect as though such minors or femmes covert were of full age or unmarried.

Rev., s. 3885; 1903, c. 728; 1905, c. 435, s. 1.

As to married woman's status as a stockholder, see *Meares v. Duncan*, 123-203—and as mortgagor to building and loan association to secure her husband's loan, see *Meares v. Butler*, 123-206.

ART. 3. LOANS

5182. Manner of making loans; security required. At such times as the by-laws shall designate, not less frequently than once a month, the board of directors shall hold meetings at which the funds in the treasury applicable for loans may be loaned. No loans shall be made by such association to any one not a shareholder thereof, nor to any shareholder for an amount greater than the par value of the shares held by such shareholder. Borrowers shall be required to give real estate security, either by way of mortgage or deed in trust unincumbered, except by the prior liens held by such association, accompanied by a transfer and pledge to the association of the shares by reason of which he became entitled to obtain such loan, as collateral security for the repayment of the loan: Provided, that the shares of any such association may be received as security for a loan on such shares of an amount not to exceed ninety per centum of the amount paid in as dues on such shares: Provided further, that liberty loan bonds issued by the United States government may be received as security to an amount not exceeding ninety per cent of the face value of such bonds, and not exceeding the par value of the shares of stock held by the borrower; and any loans heretofore made by any such association upon the security of such liberty loan bonds, within said limits, are in all respects validated.

Rev., s. 3890; 1905, c. 435, s. 8; 1907, c. 959, s. 4; 1919, c. 249.

See annotations under section 5183.

5183. Repayment at any time. Any member of such association who shall borrow from it shall have the right at any time prior to the maturing of the shares pledged as collateral for such loan to pay off and discharge his loan by paying the amount received by him, including the cost and expenses of making the loan, if the same has been deducted therefrom, with interest at the rate of six per cent per annum on the whole sum received by him to the date of settlement and all fines and dues then remaining unpaid. Upon such settlement he shall be credited with only the withdrawal value of his shares as fixed by the charter or by-laws, or by the directors of such association. In case of default by a shareholder who has borrowed from the association and a foreclosure of his mortgage or deed of trust, the amount of this indebtedness to such association shall be ascertained in the manner provided by this subchapter.

Rev., s. 3891; 1905, c. 435, s. 9.

A stockholder and borrower in a B. and L. A. is liable for his part of the expense and losses, and this must be paid before his securities are given up: *B. and L. A. v. Blalock*, 160-490. Nor can he recover the balance of the proceeds from the sale of his property under mortgage for the debt until his share of the losses is paid: *Meares v. Davis*, 121-126.

Contract by which stock taken out by a borrower and assigned to the association, when mortgage is executed, is forfeited to association, on default, without allowance of credit on mortgage for payments made on stock, is unconscionable and, though upheld by laws of association's own state, will not be enforced in this state: *Rowland v. Loan Assn.*, 116-877—and upon association realizing, upon foreclosure, its full debt, with interest and expenses, the stock should be returned to borrower, *Ibid.*

Case where complaint held sufficient to recover money paid to obtain loan: *Fagg v. Loan Assn.*, 113-364.

Case where married woman mortgaged her land to secure husband's loan stock: *Meares v. Butler*, 123-206.

Corporation holding building and loan stock must settle as an individual does: *Meares v. Imp. Co.*, 126-662.

In accounting in action to foreclose mortgage given to secure loan by building and loan association, borrower should be charged with principal of loan, with legal interest, and credited with payments made on account of principal, interest, fines and penalties: *Rowland v. Loan Assn.*, 118-173—and be charged his pro rata part of expense account of association, *Williams v. Maxwell*, 123-586.

Law will not aid defendant building and loan association or its individual corporators in effort to effect settlement of illegal transactions (here usurious): *Dickerson v. Bldg. Assn.*, 89-37 (and cases cited).

There is no device or cover by which building and loan associations can take from those who borrow money more than legal rate of interest without incurring penalties of usury laws: *Mills v. B. and L. Assn.*, 75-292; *Hallowell v. B. and L. Assn.*, 120-286.

In absence of special legislation, corporations are affected by usury law to same extent as natural persons: *Comrs. v. R. R.*, 77-289.

Inasmuch as general law fixes rate of interest at six per cent per annum, no special act of legislature can be allowed to alter or change general law in this respect: *Rowland v. Loan Assn.*, 116-877—hence chapter 444, acts of 1895, has not the effect of allowing charge by building and loan associations of greater rate than six per cent per annum on loans, *Ibid.*

Building and loan associations calling borrower "a partner" or substituting "redeeming" for "lending" or "premium" for "bonus" for an amount they profess to have advanced and yet withhold, or "dues" for "interest," or any like subterfuge, will not avail to avoid usury laws: *Mills v. B. and L. Assn.*, 75-292; *Hallowell v. B. and L. Assn.*, 120-286.

Transaction between quasi-building and loan association and its borrowing stockholder is simply a loan, and is usurious where he is liable under certain circumstances to pay more than amount loaned and legal interest: *Meroney v. Loan Assn.*, 116-882.

Where usury exacted and taken all interest is thereby forfeited, and debtor becomes only liable for the principal: *Cheek v. B. and L. Assn.*, 126-242; *Smith v. B. and L. Assn.*, 119-249.

Borrowing member of building and loan association who has paid usurious interest can recover twice the amount of usurious interest so paid: *Cheek v. B. and L. Assn.*, 126-242; *Hallowell v. B. and L. Assn.*, 120-286—for in such case legal consequences follow irrespective of question of intent, *Cheek v. B. and L. Assn.*, 126-242—and this though borrower is in *pari delicto* in transaction, *Hallowell v. B. and L. Assn.*, 120-286.

Effect of contract where usury charged is simply a loan without interest; all payments made must be credited on principal, and, in addition, borrower entitled to recover, or have credited on debt, double the amount of payments made as interest within two years prior to action brought: *Smith v. B. and L. Assn.*, 119-249.

As to costs in action under section to recover double the amount of interest paid, see *Smith v. B. and L. Assn.*, 119-249.

For annotations on interest and usury generally, see chapter Interest.

5184. Power to borrow money. Any such association may in its constitution authorize the board of directors from time to time to borrow money on the note of the association. The board of directors may, from time to time, by resolution adopted by a vote of at least two-thirds of all the members of the board and duly recorded on the minutes, borrow money for the association on such terms and conditions as they may deem proper; but the total amount of money so borrowed shall at no time exceed thirty per centum of the amount then actually paid into the association as subscription or dues on installment shares, and the same shall be used for no other purpose than to make loans to members in regular course of business or to pay maturing series of stock.

Rev., s. 3892; 1905, c. 435, s. 10; 1909, c. 898; 1911, c. 61; 1913, c. 21.

ART. 4. UNDER CONTROL OF INSURANCE COMMISSIONER

5185. Power of insurance commissioner. The insurance commissioner of the state is hereby empowered and directed to perform all the duties and exercise all the powers as to building and loan associations now imposed or conferred upon any other officer of the state by the laws thereof, unless herein otherwise provided.

Rev., s. 3893; 1905, c. 435, s. 24.

5186. Annual license fees. All domestic building and loan associations shall pay an annual license fee of twenty-five dollars and may be licensed upon filing with the insurance commissioner an application in such form as he may prescribe. Such license fee shall be used to defray the expenses incurred by the insurance commissioner in supervising building and loan associations.

1919, c. 179, s. 1.

5187. Statement filed by association. Every association doing business under this subchapter shall file in the office of the insurance commissioner, on or before the first day of February in each year, in such form as he shall prescribe, a statement of the business standing and financial condition of the applicant on the preceding thirty-first day of December, signed and sworn to by the principal, or chief managing agent, attorney, or officer thereof, before the insurance commissioner, or before a commissioner of affidavits for North Carolina, or before some notary public.

Rev., s. 3894; 1905, c. 435, s. 11; 1907, c. 959, s. 5.

5188. Statement examined, approved, and published; fees. It shall be the duty of the insurance commissioner to receive and thoroughly examine each annual statement required by this subchapter, and if made in compliance with the

requirements thereof, to publish an abstract of the same in one of the newspapers of the state, to be selected by the general agent or attorney making such statement, and at the expense of his principal. The insurance commissioner shall be entitled to a fee of five dollars, to be paid by the association filing such statement.

Rev., s. 3895; 1905, c. 435, s. 12.

5189. License revoked. If the insurance commissioner shall become satisfied at any time that any statements made by any association licensed under this subchapter are untrue, or in case a general agent shall fail or refuse to obey the provisions of this subchapter, or if upon examination the insurance commissioner is of opinion that such association or company is insolvent, or has exceeded its powers, or has failed to comply with any provisions of law, or its mode of business is not feasible for the purposes of carrying out successfully its plan, or that its condition is such as to render its further proceedings hazardous to the stockholders, he shall thereupon have power to revoke and cancel such license.

Rev., s. 3896; 1905, c. 435, s. 13; 1907, c. 959, s. 6.

5190. Examinations made; expense paid. If at any time the insurance commissioner has good reason to think that the standing and responsibility of any building and loan association or company doing business in this state, or its mode of business, is of a doubtful character, or in his discretion whenever he deems it prudent to do so, it shall be his duty to examine and investigate everything relating to the business of such company, and to that end he is hereby authorized, if he deem it advisable, to appoint a suitable and competent person to make such investigation, who shall file with the insurance commissioner a full report of his finding in such case. The expenses and cost of such examination shall be defrayed by the company or association subjected to investigation, and each company or association doing business in this state shall stipulate in writing, to be filed with the insurance commissioner, that it will pay all reasonable cost and expenses of such examination when it shall become necessary.

Rev., s. 3897; 1905, c. 435, ss. 14, 15; 1919, c. 179, s. 4.

5191. Failing to exhibit books or making false statement a misdemeanor. If any person having in his possession or control any books, accounts, or papers of any building and loan association licensed by law, shall refuse to exhibit the same to the insurance commissioner, or his agents on demand, or shall knowingly or wilfully make any false statement in regard to the same, he shall be guilty of a misdemeanor, and fined and imprisoned, at the discretion of the court.

Rev., s. 3329; 1893, c. 434; 1899, c. 164.

5192. Agent must obtain certificate. It shall be unlawful for any person to solicit business or act as agent for any building and loan association or company without having procured from the insurance commissioner a certificate that such association or company for which he offers to act is duly licensed by the state to do business for the current year in which such person solicits business or offers to act as agent.

Rev., s. 3898; 1895, c. 444, s. 3; 1899, c. 154, s. 2, subsec. 20; 1907, c. 959, s. 7.

5193. Penalties imposed and recovered. Every general agent or attorney of any building and loan company or association who shall fail or refuse to perform

any duty required of him by this subchapter shall forfeit and pay to the insurance commissioner fifty dollars for the state for every such refusal, to be recovered before any justice of the peace at the suit of the insurance commissioner.

Rev., s. 3899; 1893, c. 434, s. 2300g; 1899, c. 154, s. 2, subsec. 20.

ART. 5. FOREIGN ASSOCIATIONS

5194. Allowed to do business. A building and loan association of another state may be admitted to transact business in this state in the manner hereinafter provided, and no association not so admitted shall transact business in this state.

Rev., s. 3900; 1905, c. 435, s. 17.

5195. Copy of charter and list of officers filed. Application for authority to transact business in this state shall be made to the insurance commissioner, and on making such application every such association shall file with the insurance commissioner a duly authenticated copy of its charter or certificate of incorporation, its constitution and by-laws, and thereafter certified copies of all amendments thereto, the names and addresses of its officers and directors, the compensation paid each officer, and a report of its condition, in such form as may be prescribed by the insurance commissioner, which shall be verified by oath of such officers and other persons as the commissioner shall designate, and the commissioner shall furnish blank forms for the report required, and may call for additional reports at such other times as may seem to him expedient.

Rev., s. 3902; 1905, c. 435, s. 19.

5196. License granted. If it shall appear to the insurance commissioner by the report aforesaid and by an examination of the affairs of such association that it has good assets of sufficient value to cover all liabilities, and that its methods of doing business are safe and not contrary to the laws governing building and loan associations of this state, it may be admitted to transact business in this state upon a certificate of authority to be issued by the insurance commissioner, which shall only be issued when such association shall have complied with the further requirements of this article.

Rev., s. 3903; 1905, c. 435, s. 20.

5197. Securities deposited. The insurance commissioner before issuing the certificate of authority aforesaid shall require every such association to deposit with the commissioner such securities as he may approve, amounting to at least thirty thousand dollars, which securities shall be held by him in trust for the exclusive benefit and security of the creditors and shareholders of such association resident in this state, and he shall have authority to require it to deposit additional securities and to order a change in any of the securities so deposited at any time, and no change or transfer of the same shall be made or be effectual without his consent. Such deposit shall be maintained intact in the full sum required at all times, but the association making such deposit, so long as it shall continue solvent and comply with all the provisions of this subchapter applicable to it, may receive the dividends or interest on the securities deposited, and may from time to time, with the assent of the commissioner, withdraw any of such securities on depositing with the commissioner other like securities the par value of which shall be equal to such as may be withdrawn.

Rev., s. 3904; 1905, c. 435, s. 21.

5198. Annual certificate; service of process. Such certificate of authority shall be for the current year only, and shall not be issued until such association shall, by a duly executed instrument filed with the insurance commissioner of the state, constitute the insurance commissioner and his successors in office its true and lawful attorney, upon whom all original process in any action or legal proceedings against it may be served, and therein shall agree that any original process against it which may be served upon the commissioner shall be of the same force and validity as if served on the association, and that the authority thereof shall continue in force irrevocable so long as any liability of the association remains outstanding in this state. The service of such process shall be made by leaving a copy of the same in the office of the insurance commissioner, with a fee of two dollars, to be taxed in the plaintiff's costs. When any original process is thus served, the commissioner, by letter directed to the secretary, shall within two days after such service forward to the secretary a copy of the process served upon him, and such service shall be deemed sufficient service upon the association. The commissioner shall keep a record of all such process, showing the day and hour of service.

Rev., s. 3906; 1905, c. 435, s. 23.

5199. Agent must have certificate of license; fees. It shall be unlawful for any person to solicit business or act as agent for any foreign building and loan association or company doing business in this state without having first procured from the insurance commissioner a certificate that such association or company for which he offers to act is duly licensed by the state to do business for the current year in which such person solicits business or offers to act as agent. The insurance commissioner shall be entitled to a fee of one dollar for issuing each such certificate, to be paid by the company for which the same is issued. Any person violating the provisions of this section shall be guilty of a misdemeanor.

Rev., ss. 3327, 3901; 1895, c. 444, s. 3; 1905, c. 435, s. 18.

5200. Fees and expenses. Every such association shall pay for filing a certified copy of its charter or certificate of incorporation twenty dollars; for filing original annual reports, twenty dollars; for certificate of authority, annually, two hundred and fifty dollars; for certificate for each agency, five dollars; and shall defray all expenses incurred in making any examination of its affairs as herein provided for; and the insurance commissioner may maintain an action in the name of the state against such association for the recovery of such expenses in any court of competent jurisdiction.

Rev., s. 3905; 1905, c. 435, s. 22.

5201. Stock listed for taxation. All foreign building and loan associations doing business in this state shall list for taxation with the state auditor, through its agent, its stock held by citizens of this state in the county, city, or town where the owners of such stock reside. In listing such stock for taxation the withdrawal value as fixed by the by-laws of each company shall be furnished the list-taker, and the stock shall be valued for taxation as other money investments of citizens of this state. All such taxes shall be paid by the association listing the stock.

Rev., s. 3907; 1905, c. 435, s. 25.

See section 7944.

5202. Failure to list stock for taxation a misdemeanor. If any foreign building and loan association or officer of such association doing business in this state, or any local officer or person shall collect dues, assessments, premiums, fines, or interest from any citizen of this state for any such association which has failed or refused to list for taxation the stock held by citizens of this state, he shall be guilty of a misdemeanor and subject to fine or imprisonment, or both, in the discretion of the court.

Rev., s. 3328; 1905, c. 435, s. 25.

5203. All contracts deemed made in this state. Any contract made by any foreign association with any citizen of this state shall be deemed and considered a North Carolina contract, and shall be so construed by all the courts of this state according to the laws thereof.

1905, c. 435, s. 26.

State usury laws apply to loans by foreign building and loan associations at home office: *Rowland v. Building Assn.*, 115-825; *Meroney v. Loan Assn.*, 116-882.

SUBCHAPTER II. LAND AND LOAN ASSOCIATIONS

ART. 6. ORGANIZATION AND POWERS

5204. Application of term. The term "Land and Loan Associations" shall apply to and include all corporations, companies, societies or associations organized for the purpose of making loans to its members only, and of enabling its members to acquire real estate, make improvements thereon, and remove incumbrances therefrom by the payment of money in periodical installments or principal sums, and for the accumulation of a fund to be returned to members who do not obtain advances for such purposes, where the principles of building and loan associations and their work are adapted to the use of the farmers and the rural population.

It shall be unlawful for any corporation, company, society, or association doing business in this state not so conducted to use in its corporate name the term "land and loan association," or in any manner or device to hold themselves out to the public as a land and loan association.

1915, c. 172, s. 1.

5205. Incorporation and powers. Land and loan associations shall be incorporated, supervised, and be subject to such regulations and have such privileges as are prescribed for building and loan associations under the laws of this state as they now are or may be hereafter enacted, except as prescribed in this article.

1915, c. 172, s. 2.

5206. Loans. The boards of directors of land and loan associations may contract for loans to the amount of seventy-five per cent of the securities used by them as collateral, where the loans are on long time (three or more years), and for at least one per cent less than is charged by such associations on their loans to shareholders; and they may make short loans to their shareholders on their shares and personal indorsement or personal property.

1915, c. 172, s. 3.

5207. Reserve associations. Associations to be known as "Reserve Land and Loan Associations" may be chartered and licensed as provided in this article,

when organized and the stock therein held by local land and loan associations, and shall have such powers, rights, and privileges as are accorded to other domestic associations, and may conform to such laws, rules, and regulations as may be prescribed by the laws of the United States, or of this state, to enable them to receive moneys, bonds, or securities to be used in loans and to secure the same. Such reserve associations shall be under the supervision of the insurance commissioner as are building and loan associations.

1915, c. 172, s. 4.

SUBCHAPTER III. CREDIT UNIONS

ART. 7. SUPERINTENDENT OF COÖPERATIVE ASSOCIATIONS AND CREDIT UNIONS

5208. Office created. There shall be established as a part of the division of markets and rural coöperation, established under the "Joint Committee for Agricultural Work," provided for in the chapter Agriculture, article 1, part 3, a superintendent of coöperative associations and credit unions, and such assistants as may be necessary, at salaries to be fixed by the "Joint Committee for Agricultural Work" of the state board of agriculture and the North Carolina State College of Agriculture and Engineering.

1915, c. 115, s. 1.

5209. Duties of the officer. The duties of the superintendent of coöperative associations and credit unions shall be as follows:

1. To organize and conduct, in the division of markets and rural coöperation, a bureau of information in regard to coöperative associations and rural credits.

2. Upon the application of three persons residing in the state of North Carolina, to furnish, without cost, such printed information and blank forms as, in his discretion, may be necessary for the formation and establishment of any coöperative association or any local credit union in the state.

3. To maintain an educational campaign in the state looking to the promotion and organization of coöperative associations and credit unions; and upon the written request of twelve bona fide residents of any particular locality in this state expressing a desire to form a coöperative association or local credit union at such locality, the superintendent or one of his assistants shall proceed as promptly as convenient to such locality and advise and assist such organizers to establish the institution in question.

4. To examine at least once a year, and oftener if such examination be deemed necessary by the superintendent or his assistant, the credit unions and coöperative associations formed under this subchapter. A report of such examination shall be filed with the division of markets and rural coöperation, a copy mailed to the credit union or coöperative association at its proper address, and a copy sent to the clerk of the superior court of the county in which the principal office of the credit union or coöperative association is located, and such report shall be kept on file by the clerk of the superior court for public inspection.

1915, c. 115, s. 1.

ART. 8. INCORPORATION OF CREDIT UNIONS

5210. Application filed. Seven or more persons employed or residing in the state may become a credit union by making, signing, and acknowledging a certificate which shall contain:

1. The name of the proposed credit union, which shall include the words, "Credit Union."

2. A statement that incorporation is desired under this article.

3. The conditions, whether of residence, of occupation, or otherwise, which shall qualify persons for membership.

4. The par value of the shares, which shall not exceed twenty-five dollars.

5. The city, village, or town in which its principal business office is to be located. If it is to be located in an incorporated city, the street address of the city shall be given. If the condition of its membership is employment by a certain individual, copartnership, or corporation, a statement that its office shall be with such individual, copartnership, or corporation may be substituted for the street address.

6. The number of its directors, not less than five, all of whom must be members of and shareholders in the corporation.

7. The names and postoffice addresses of directors for the first year.

8. The names and postoffice addresses of the subscribers to the certificate, and a statement of the number of shares of stock which each agrees to take in the corporation.

1915, c. 115, s. 2.

5211. By-laws adopted. At the time of filing the certificate the incorporators shall adopt by-laws which shall provide:

1. The name of corporation.

2. The purposes for which it is formed.

3. Qualifications for membership.

4. The date of the annual meeting; the manner in which members shall be notified of meetings; the manner of conducting the meetings; the number of members which constitute a quorum at the meetings, and the regulations as to voting.

5. The number of members of the board of directors, their powers and duties, and the compensation and duties of officers elected by the board of directors.

6. The number of members of the credit committee, their powers and duties.

7. The number of members of the supervisory committee, their powers and duties.

8. The par value of shares of capital stock.

9. The conditions upon which shares may be issued, paid in, transferred, and withdrawn.

10. The fines, if any, which shall be charged for failure to meet obligations to the corporation punctually.

11. The conditions upon which deposits may be received and withdrawn. Whether the proposed corporation shall, in addition, have power to borrow funds.

12. The manner in which the funds of the corporation shall be invested.

13. The conditions upon which loans may be made and repaid.

14. The maximum rate of interest that may be charged upon loans, not to exceed, however, the legal rate.

15. The method of receipting for money paid on account of shares, deposits, or loans.

16. The manner in which the reserve fund shall be accumulated.

17. The manner in which dividends shall be determined and paid to members.

18. The manner in which a voluntary dissolution of the corporation shall be effected.

1915, c. 115, s. 2.

5212. Certificate of incorporation. The by-laws acknowledged to have been adopted by all of the incorporators, together with the certificate of incorporation, shall be filed in the office of the superintendent of coöperative associations and credit unions, who shall approve the certificate of incorporation if he is satisfied that it is in conformity with this subchapter, and shall approve the by-laws if he is satisfied as to the character of the incorporators and that the by-laws are reasonable and will tend to give assurance that the affairs of the prospective credit union will be administered in accordance with this subchapter. Thereupon, the superintendent of coöperative associations and credit unions shall issue to the corporation a certificate of approval, annexed to a duplicate of the certificate of incorporation and of the by-laws, which certificate of approval, together with the attached duplicate certificate of incorporation and duplicate by-laws, shall be filed in the office of the clerk of the superior court of the county in which the office of such credit union is situated, and upon such filing the incorporators shall become and be a corporation. The county clerk shall charge the same filing fee for filing the certificate of approval, certificate of incorporation and by-laws as he is now allowed to charge for filing a certificate of incorporation of a corporation organized under the business corporations law of the state.

1915, c. 115, s. 2.

5213. Amendment of by-laws. The by-laws adopted by the incorporators and approved by the superintendent of coöperative associations and credit unions shall be the by-laws of the corporation, and no amendment to the by-laws shall become operative until such amendment shall have been approved by the superintendent of coöperative associations and credit unions, and a copy thereof certified by him, with a certificate of his approval, shall be filed in the office of the clerk of the superior court of the county where the office of the credit union is located. Such approval may be given or withheld by the superintendent of coöperative associations and credit unions at his discretion. The county clerk shall receive the same fee for filing as provided in the preceding section.

1915, c. 115, s. 3.

5214. Restriction of use of terms. The use by any person, copartnership, association, or corporation except corporations formed under the provisions of this subchapter, of any name or title which contains the two words "credit" and "union," shall be a misdemeanor.

1915, c. 115, s. 4.

5215. Change of place of business. A credit union may change its place of business on the written approval of the superintendent of coöperative associations and credit unions, which written approval shall be filed in the office of the superintendent of coöperative associations and credit unions and a duplicate of the approval in the office of the clerk of the superior court of the county where its office was located, and a second duplicate in the office of the clerk of the superior court of the county in which the new office is to be located. Such approval of the superintendent may be given or withheld at his discretion.

1915, c. 115, s. 25.

ART. 9. POWERS OF CREDIT UNIONS

5216. General nature of business. A credit union may receive the savings of its members in payment for shares or on deposit; may loan to its members at reasonable rates of interest not exceeding the legal rate, or may invest as hereinafter provided the funds so accumulated, and may undertake such other activities relating to the purpose of the corporation as its by-laws may authorize.

1915, c. 115, s. 5.

5217. Receive deposits. A credit union may receive on deposit the savings of its members and also nonmembers in such amounts and upon such terms as the board of directors may determine and the by-laws shall provide.

1915, c. 115, s. 16.

5218. Borrowing money. If the by-laws so provide, a credit union shall have power to borrow money from any source in addition to receiving deposits from its own members, but the aggregate amount of such indebtedness in the case of credit unions which have over five thousand dollars in capital, surplus, and reserve funds shall not at any one time exceed more than the sum of such funds.

1915, c. 115, s. 17; 1917, c. 232, s. 1.

5219. Investment of funds. The capital, deposits, undivided profits and reserve fund of the corporation may be invested in one of the following ways, and in such way only:

1. They may be lent to the members of the corporation in accordance with the provisions of this subchapter.

2. They may be deposited to the credit of the corporation in savings banks, credit unions, state banks or trust companies, incorporated under the laws of the state, or in National banks located therein. Funds of credit unions deposited in a savings bank, state bank, or trust company which may become insolvent, shall be preferred in the same way that funds of a "savings and loan association" so deposited are preferred under the banking law of the state.

3. After a credit union shall have been in existence for three fiscal years so much of the reserve fund thereof as shall equal twenty per centum of the total liabilities of the credit union shall be deposited on interest in banks incorporated under the laws of the state, and in the National banks therein.

4. Not more than ten per cent of the capital stock and reserve fund of a credit union may be invested in the stock of another credit union.

1915, c. 115, s. 18; 1917, c. 232, ss. 2, 3.

5220. Loans. 1. *To members.* A credit union may lend to its members for such purposes and upon such security and terms as the by-laws shall provide and the credit committee shall approve; but security must be taken for any loan in excess of fifty dollars. An indorsed note shall be deemed to be security within the meaning of this section.

2. *Installment loans.* A member who needs funds with which to purchase necessary supplies for growing crops may receive a loan in fixed monthly installments instead of in one sum.

3. *Loans to members of committee.* The supervisory committee shall appoint a substitute to act on the credit committee in the place of any member in case such member makes application to borrow money from the credit union or becomes surety for any other member whose application for a loan is under consideration.

4. *Loans to persons not members forbidden.* All officers and members of any committees in any way knowingly permitting or participating in making a loan of funds of a credit union to one not a member thereof shall be guilty of a misdemeanor. The credit union shall have the right to recover the amount of such illegal loans from the borrower or from any officers or members of committees who knowingly permitted or participated in the making thereof, or from all of them jointly.

5. *Repayment of loans.* A borrower may repay the whole or any part of his loan on any day on which the office of the corporation is open for the transaction of business.

1915, c. 115, s. 19; 1917, c. 232, s. 4.

5221. Rate of interest; penalty. No corporation organized pursuant to this subchapter shall directly or indirectly charge or receive any interest, discount, or consideration, other than the entrance fee, greater than the legal rate.

Any corporation, any person, the several officers of any corporation, and the members of committees who shall violate the foregoing prohibition shall be guilty of a misdemeanor. The corporation shall also be subject to procedure by the superintendent of coöperative associations and credit unions as prescribed herein in article twelve.

1915, c. 115, s. 20.

5222. Reserve fund. All entrance fees, transfer fees, and fines shall, after the payment of organization expenses, be known as reserve income, and shall be added to the reserve fund of the corporation.

At the close of each fiscal year there shall be set apart to the reserve fund twenty-five per centum of the net income of the corporation which has accumulated during the year. But upon the recommendation of the board of directors the members at an annual meeting may increase, and whenever such funds equal the amount of the capital may decrease, the proportion of profits which is required by this section to be set apart to the reserve fund. Nor shall the reserve fund in any case exceed the capital of the corporation plus fifty per centum of its other liabilities.

The reserve fund shall belong to the corporation and shall be held to meet contingencies, and shall not be distributed to the members except upon the dissolution of the corporation.

1915, c. 115, s. 21.

5223. Dividends. At the close of the fiscal year a credit union may declare a dividend not to exceed six per cent per annum from the income during the year and which remains after the deduction of expenses, losses, interest on deposits, and the amount required to be set apart to the reserve fund. Dividends shall be paid on all fully paid shares outstanding at the close of the fiscal year, but shares which become fully paid during the year shall be entitled to a proportional part of such dividend calculated from the first day of the month following such payment in full.

1915, c. 115, s. 22.

5224. Voluntary dissolution. At any meeting specially called to consider the subject, four-fifths of the entire membership of the corporation may vote to dissolve the corporation and upon such vote shall signify their consent to such dissolution in writing. Such corporation shall then file in the office of the superintendent of coöperative associations and credit unions such consent, attested by its secretary or treasurer and its president or vice-president, with a statement of the names and residences of the existing board of directors of the corporation and the names and residences of its officers duly verified. The superintendent of coöperative associations and credit unions, upon receipt of satisfactory proof of the solvency of the corporation, shall issue to such corporation, in duplicate, a certificate to the effect that such consent and statement have been filed and that it appears therefrom that such corporation has complied with this section. Such duplicate certificate shall be filed by the corporation in the office of the clerk of the superior court of the county in which the corporation has its place of business, and thereupon such corporation shall be dissolved and shall cease to carry on business except for the purpose of adjusting and winding up its affairs. The corporation, by its board of directors, shall then proceed to adjust and wind up its business and affairs, with power to carry out its contracts, collect its accounts receivable, and to liquidate its assets and apply the same in discharge of debts and obligations of such corporation, and after paying and adequately providing for the payment of such debts and obligations each share, according to the amount paid thereon, shall be entitled to its proportion of the balance of the assets. The corporation shall continue in existence for the purpose of paying, satisfying, and discharging any existing debts or obligations, collecting and distributing its assets, and doing all other acts required in order to adjust and wind up its business and affairs, and may sue and be sued for the purpose of enforcing such debts and obligations until its business and affairs are fully adjusted and wound up.

1915, c. 115, s. 24.

5225. Savings institution; restriction of taxation. The corporation shall be deemed an institution for savings, and together with all accumulations therein shall not be taxable under any law which shall exempt savings banks or institu-

tions for savings from taxation; nor shall any law passed taxing corporations in any form, or the shares thereof, or the accumulations therein, be deemed to include corporations doing business in pursuance of the provisions of this subchapter, unless they are specifically named in such law. The shares of credit unions, being hereby regarded as a system for saving, shall not be subject to any stock-transfer tax either when issued by the corporation or transferred from one member to another.

1915, c. 115, s. 26.

ART. 10. SHARES IN THE CORPORATION

5226. Ownership and transfer of shares. The capital of a credit union shall consist of the payments that have been made to it by the several members thereof on the shares. Shares may be subscribed for and paid in such manner as the by-laws shall prescribe. The credit union shall have a lien on the shares of any member and upon any dividends payable thereon for and to the extent of any loan made to him and of any dues or fines payable by him. The credit union may, upon the resignation or expulsion of a member, cancel the shares of such member and apply the withdrawal value of such shares towards the liquidation of the member's indebtedness.

A credit union may, if the by-laws so provide, charge an entrance fee for each share subscribed, to be paid by the shareholder upon his election to membership.

Fully paid shares of a credit union may be transferred to any person eligible for membership, upon such terms as the by-laws may provide, and the payment of a transfer fee shall not exceed twenty-five cents per share.

1915, c. 115, s. 13.

5227. Shares and deposits for minors and in trust. Shares may be issued and deposits received in the name of a minor, and such shares and deposits may, in the discretion of the directors, be withdrawn by such minor or his parent or guardian, and in either case payments made on such withdrawals shall be valid. If shares are held or deposits made in trust, the name and residence of the beneficiary shall be disclosed and the account shall be kept in the name of such holder as trustee for such person. Such shares or deposits may, upon the death of the trustee, be withdrawn by the person for whom the shares were held or for whom such deposits were made, or by his legal representatives.

1915, c. 115, s. 14.

5228. Fines and penalties. For failure by any member of a credit union to meet his payments on shares when due, such fines and other penalties may be imposed upon the delinquent member as the by-laws provide. Such fines shall not exceed two per centum per month or a fraction thereof on amounts due, except that a minimum fine of five cents may be imposed.

1915, c. 115, s. 15.

5229. Liability of shareholders. A shareholder of any such corporation, unless the by-laws so provide, shall not be individually liable for the payment of its debts for an amount in excess of the par value of the shares which he owns or for which he has subscribed.

1915, c. 115, s. 26.

ART. 11. MEMBERS AND OFFICERS

5230. Who may become members. The membership of the corporation shall consist of those persons who have been duly elected to membership and who have subscribed for one or more shares and have paid for the same in whole or in part, together with the entrance fee as provided in the by-laws, and have complied with such other requirements as the by-laws may contain. No credit union shall ever pay any commission or offer compensation for the securing of members or on the sale of shares.

1915, c. 115, s. 6.

5231. Expulsion and withdrawal of members. The board of directors may expel from the corporation any member who has not carried out his engagement with the corporation, or has been convicted of a criminal offense, or neglects or refuses to comply with the provisions of this subchapter or of the by-laws, or who habitually neglects to pay his debts, or shall become insolvent or bankrupt. The members at a regularly called meeting may expel from the corporation any member who has become intemperate or in any way financially irresponsible; no member shall be expelled until he has been informed in writing of the charges against him and an opportunity has been given him, after reasonable notice, to be heard thereon.

A member may withdraw from a credit union by filing a written notice of his intention to withdraw.

The amounts paid in on shares or deposits by an expelled or withdrawing member, with any dividends credited to his shares and any interest accrued on his deposits to the date of expulsion or withdrawal, shall be paid to such member, but in the order of expulsion or withdrawal and only as funds therefor become available, after deducting any amounts due to the corporation by such member. The member shall have no other or further right in the credit union or to any of its benefits, but such expulsion or withdrawal shall not operate to relieve the member from any remaining liability to the corporation.

1915, c. 115, s. 23.

5232. Meetings; right of voting. The fiscal year of every such corporation shall end at the close of business on the thirty-first day of December. The annual meeting of the corporation shall be held at such time and place as the by-laws prescribe. Special meetings may be held by order of the directors or of the supervisory committee, and shall be held upon request in writing of ten per cent of the members. Notice of all meetings of the corporation shall be given in the manner prescribed in the by-laws. At all meetings of members or shareholders a member shall have one vote and but one vote, irrespective of the number of shares that may be held by him, and in case of sickness or other unavoidable absence of a member he shall be allowed to vote by proxy in writing, but no member present shall vote more than one such proxy. At any meeting the members may decide upon any question of interest to the corporation, and overrule the board of directors, and by a three-fourths vote of those present and represented, provided the notice of the meeting shall have specified the question to be considered, may vote to amend the by-laws.

1915, c. 115, s. 8.

5233. Election of directors and committees. 1. *Number elected.* At the annual meeting the members shall elect a board of directors of not less than five members, a credit committee and a supervisory committee of not less than three members each. However, in credit unions whose business office is located in places other than incorporated cities, the board of directors as such may also be the credit committee. Except as hereinafter specified, no member of the board shall be a member of either of such committees, nor shall one person be a member of more than one of such committees. All members of committees and all directors, as well as all officers whom they may elect, shall be sworn, and shall hold their several offices for such term as may be determined by the by-laws.

2. *Oath of office.* The oath required of each director, officer, and member of committee shall be the oath of the individual taking the same that he will, so far as the duty devolves on him, diligently and honestly administer the affairs of such corporation, and will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to such corporation, and that he is the owner in good faith and in his own right on the books of the corporation of at least one share therein. Such oath shall be subscribed by the individual making it and certified by the officer before whom it is taken, and shall immediately be transmitted to the superintendent of coöperative associations and credit unions and filed and preserved in his office.

1915, c. 115, s. 9.

5234. Duties of board of directors. 1. *Elect executive officers.* At their first meeting and at each first meeting in the fiscal year, the board of directors shall elect from their number a president, vice-president, a secretary, and a treasurer, who shall be the executive officers of the corporation. The offices of secretary and treasurer may, if the by-laws so provide, be held by one person.

2. *General management.* The board of directors shall have the general management of the affairs, funds, and records of the corporation, shall meet as often as may be necessary, and, unless the by-laws shall specifically reserve all or any of these duties to the members, it shall be the special duty of the directors:

1. To act upon all applications for membership and the expulsion of members.
2. To fix the amount of the surety bond which shall be required of each officer having the custody of funds.

3. To determine from time to time the rate of interest which shall be allowed on deposits and charged on loans.

4. To fix the maximum number of shares which may be held by and the maximum amount which may be lent to any one member; to declare dividends; and to recommend amendments to the by-laws.

5. To fill vacancies in the board of directors or in the credit committees until the election and qualification of successors.

6. To have charge of the investment of the funds of the corporation except loans to members, and to perform such other duties as the members may from time to time authorize.

3. *Compensation.* No member of the board of directors or of the credit or supervisory committees shall receive any compensation for his services as a member of the board or committees. But the officers elected by the board of directors may receive such compensation as the members may authorize.

1915, c. 115, s. 10.

5235. Duties of credit committee. The credit committee shall approve every loan or advance made by the corporation to members. Every application for a loan shall be made in writing and shall state the purpose for which the loan is desired and the security offered. No loan shall be made unless it has received the unanimous approval of those members of the committee who were present when it was considered, who shall constitute at least a majority of the committee, nor if any member of the committee shall disapprove thereof; but the applicant for a loan may appeal from the decisions of the credit committee to the board of directors. The credit committee shall meet as often as may be required after due notice has been given to each member.

1915, c. 115, s. 11.

5236. Duties of supervisory committee. The supervisory committee shall inspect the securities, cash, and accounts of the corporation and supervise the acts of its board of directors, credit committee, and officers. At any time the supervisory committee, by a unanimous vote, may suspend the credit committee or any member of the board of directors, or any officer elected by the board, and by a majority vote may call a meeting of the shareholders to consider any violation of this subchapter or of the by-laws, or any practice of the corporation which, in the opinion of said committee, is unsafe and unauthorized. Within seven days after the suspension of the credit committee the supervisory committee shall cause notice to be given of a special meeting of the members to take such action relative to such suspension as may seem necessary. The supervisory committee shall fill vacancies in their own number until the next regular meeting of the members.

At the close of each fiscal year the supervisory committee shall make a thorough audit of the receipts, disbursements, income, assets, and liabilities of the corporation for the fiscal year, and shall make a full report thereon to the directors. This report shall be read at the annual meeting of the members and shall be filed and preserved with the records of the corporation.

1915, c. 115, s. 12.

ART. 12. SUPERVISION AND CONTROL

5237. Subject to superintendent of credit unions. Corporations organized under the provisions of this subchapter shall be subject to the supervision of the superintendent of coöperative associations and credit unions.

1915, c. 115, s. 7.

5238. Annual reports; penalty. Every corporation organized under this subchapter shall, in January of each year, make a report for the previous calendar year to the superintendent of coöperative associations and credit unions, giving such information as he shall require, which report shall be verified by the oath of the president, treasurer and secretary, as well as by the oath of a majority of the members of the supervisory committee, and it shall make such other and further reports under the like oath as the superintendent shall demand at any time.

Any such corporation which neglects to make an annual report within the month of January, or any of the other reports required by the superintendent of coöperative associations and credit unions at the time fixed by the superintendent, shall forfeit to the state five dollars for each day such neglect continues.

1915, c. 115, s. 7.

5247. By-laws adopted. At the time of making the articles of incorporation the incorporators shall make by-laws which shall provide:

1. The name of the corporation.
2. The purposes for which it is formed.
3. Qualifications for membership.
4. The date of the annual meeting; the manner in which members shall be notified of meetings; the manner of conducting the meetings; the number of members which shall constitute a quorum at the meetings, and regulations as to voting.
5. The number of members of the board of directors; powers and duties; the compensation and duties of officers elected by the board of directors.
6. In the case of selling agencies or productive societies, regulations for grading.
7. In the case of selling agencies or productive societies, regulations governing the sale of products by the members through the organization.
8. The par value of the shares of capital stock.
9. The conditions upon which shares may be issued, paid in, transferred, and withdrawn.
10. The manner in which the reserve fund shall be accumulated.
11. The manner in which the dividends shall be determined and paid to members.

1915, c. 144, s. 5.

5248. General corporation law applied. All coöperative associations shall be maintained in accordance with the general corporation law, except as otherwise provided for in this subchapter.

1915, c. 144, s. 17.

5249. Other corporations admitted. All coöperative corporations, companies, or associations heretofore organized and doing business under prior statutes, or which have attempted to so organize and do business, shall have the benefit of all of the provisions of this subchapter, and be bound thereby on filing with the secretary of state a written declaration, signed and sworn to by the president and secretary, to the effect that the coöperative company or association has by a majority vote of its shareholders decided to accept the benefits of and to be bound by the provisions of this subchapter. No association organized under this subchapter shall be required to do or perform anything not specifically required herein, in order to become a corporation.

1915, c. 144, s. 16.

ART. 14. STOCKHOLDERS AND OFFICERS

5250. Certificates for stock fully paid. Certificates of stock shall not be issued to any subscriber until fully paid, but the by-laws of the association may allow subscribers to vote as shareholders: Provided, part of the stock subscribed for has been paid in cash.

1915, c. 144, s. 11.

5251. Ownership of shares limited. No shareholder in any such association shall own shares of a greater aggregate par value than twenty per cent of the paid-in capital stock, except as hereinafter provided, or be entitled to more than one

vote. A coöperative association shall reserve the right of purchasing the stock of any member whose stock is for sale, and may restrict the transfer of stock to such persons as are made eligible to membership in the by-laws.

1915, c. 144, s. 9.

5252. Shares issued on purchase of business. Whenever an association, created under this act, shall purchase the business of another association or person, it may pay for the same in whole or in part by issuing to the selling association or persons shares of its capital stock to an amount which at par value would equal the fair market value of the business so purchased, and in such case the transfer to the association of such business at such valuation shall be equivalent to payment in cash for the shares of stock so issued.

1915, c. 144, s. 10.

5253. Absent members voting. At any regularly called general or special meeting of the shareholders a written vote received by mail from any absent shareholder, and signed by him, may be read in such meeting, and shall be equivalent to a vote of such of the shareholders so signing: Provided, he has been previously notified in writing of the exact motion or resolution upon which such vote is taken, and a copy of same is forwarded with and attached to the vote so mailed by him. In case of sickness or other unavoidable absence of a member, he shall be allowed to vote by proxy in writing; but no member shall vote more than one such proxy.

1915, c. 144, s. 12.

5254. Directors and other officers. Every such association shall be managed by a board of not less than five directors. The directors shall be elected by and from the stockholders of the association at such time and for such term of office as the by-laws may prescribe, and shall hold office for time for which elected and until their successors are elected and shall enter upon the discharge of such duties as are prescribed in the by-laws; but a majority of the stockholders shall have the power at any regular or special stockholders' meeting, legally called, to remove any director or officer for cause, and fill the vacancy, and thereupon the director or officer so removed shall cease to be a director or officer of the association. The officers of every such association shall be a president, one or more vice-presidents, a secretary and treasurer, who shall be elected annually by the directors, and each of the officers must be a director of the association. The office of secretary and treasurer may be combined, and when so combined the person filling the office shall be secretary-treasurer.

1915, c. 144, s. 6.

ART. 15. POWERS AND DUTIES

5255. Nature of business authorized. An association created under this subchapter shall have power to conduct any agricultural, dairy, mercantile, mining, manufacturing, or mechanical business, on the coöperative plan.

1915, c. 144, s. 8.

5256. Amendment of articles. The association may amend its articles of incorporation by a majority vote of its shareholders at any regular shareholders'

meeting, or any special shareholders' meeting called for that purpose, on ten days notice to the shareholders. The power to amend shall include the power to increase or diminish the amount of capital stock and the number of shares: Provided, the amount of the capital stock shall not be diminished below the amount of the paid-up capital at the time the amendment is adopted. Within thirty days after the adoption of an amendment to its articles of incorporation, an association shall cause a copy of such amendment adopted to be recorded in the office of the secretary of state and of the clerk of court of the county where the principal place of business is located.

1915, c. 144, s. 7.

5257. Apportionment of earnings. The directors, subject to revision by the association at any general or special meeting, shall apportion the earnings by first paying dividends on the paid-up capital stock, not exceeding six per cent per annum, then setting aside not less than ten per cent of the net profits for a reserve fund, until an amount has been accumulated in the reserve fund equal to thirty per cent of the paid-up capital stock, and not less than two per cent thereof for an educational fund to be used in teaching coöperation, and the remainder of the net profits by uniform dividend upon the amount of purchases of shareholders and upon the wages and salaries of employees, and one-half of such uniform dividend to nonshareholders on the amount of their purchase, which may be credited to the account of such nonshareholders on account of capital stock of the association; but in selling agencies such as fruit, truck, peanuts, and cotton growers' associations, and in productive associations such as creameries, canneries, warehouses, factories, and the like, dividends shall be prorated on raw materials delivered instead of on goods purchased. In case the association is both a selling and productive concern, the dividends may be on both raw material delivered and on goods purchased by patrons.

1915, c. 144, s. 13.

5258. Time of distribution. The profits or net earnings of such associations shall be distributed to those entitled thereto, at such times as the by-laws shall prescribe, which shall be as often as once in twelve months.

1915, c. 144, s. 14.

5259. Reports to secretary of state. Every association organized under the provisions of this subchapter shall annually, on or before the first day of March of each year, make a report to the secretary of state; such report shall contain the name of the company, its principal place of business in this state, and generally a statement as to its business, showing total amount of business transacted, amount of capital stock subscribed for and paid in, number of shareholders, total expenses of operation, amount of indebtedness or liabilities, and its profits and losses. A copy of such report shall also be filed with the division of markets and rural organization conducted by the "Joint Committee for Agricultural Work" of the state board of agriculture and the North Carolina State College of Agriculture and Engineering, as provided in the chapter on Agriculture.

1915, c. 144, s. 15.

CHAPTER 94

DRAINAGE

SUBCHAPTER I. DRAINAGE BY INDIVIDUAL OWNERS

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SUBCHAPTER I. DRAINAGE BY INDIVIDUAL OWNERS

ART. 1. JURISDICTION IN CLERK OF SUPERIOR COURT

Part 1. Petition by Individual Owner

5260. Name of proceeding. The proceeding under this subchapter shall be the same as prescribed in the chapter Eminent Domain, article 2, Condemnation Proceedings.

Rev., s. 4028; Code, s. 1324.

Section referred to in *Skinner v. Carter*, 108-107.

5261. Petition filed; commissioners appointed. Any person owning pocoson, swamp, or flat lands, or owning lowlands subject to inundation, which cannot be conveniently drained or embanked so as to drain off or dam out the water from such lands, except by cutting a canal or ditch, or erecting a dam through or upon

the lands of other persons, may by petition apply to the superior court of the county in which the lands sought to be drained or embanked or some part of such lands lie, setting forth the particular circumstances of the case, the situation of the land to be drained or embanked, to what outlet and through whose lands he desires to drain, or on what lands he would erect his dam, and who are the proprietors of such lands; whereupon a summons shall be served on each of the proprietors, and, on the hearing of the petition the court shall appoint three persons as commissioners, who shall be duly sworn to do justice between the parties.

Rev., s. 3983; Code, s. 1297; R. C., c. 40, s. 1; 1795, c. 436; 1852, c. 57, ss. 1, 2.

The different sections of this chapter should be construed to harmonize and constitute a system of drainage laws: *Adams v. Joyner*, 147-77.

The enactment of such laws is a proper exercise of power under the constitution: *Forehand v. Taylor*, 155-353; *Sanderlin v. Luken*, 152-738; *Staton v. Staton*, 148-490; *Adams v. Joyner*, 147-77; *Porter v. Armstrong*, 132-66, 134-447, 139-179; *Pool v. Trexler*, 76-297; *Brown v. Keener*, 74-714; *Norfleet v. Cromwell*, 70-634.

Right of the state to condemn land for drains rests on the same foundation as its right in cases of public roads, mills, railroads, schoolhouses, etc.: *Sanderlin v. Luken*, 152-738; *Norfleet v. Cromwell*, 70-634; *Brown v. Keener*, 74-714; *Pool v. Trexler*, 76-297. See section 5312.

As to rights of drainage in swamp lands, see *Mizell v. McGowan*, 120-134. Water cannot be diverted from its natural course so as to damage another, but it may be increased and accelerated: *Mizell v. McGowan*, 129-93, 125-439; *Lassiter v. R. R.*, 126-509; *Hocutt v. R. R.*, 124-214; *Briscoe v. Young*, 131-386; *Mullen v. Canal Co.*, 130-502; *Briscoe v. Parker*, 145-14; *Davenport v. R. R.*, 148-287; *Roberts v. Baldwin*, 151-407; *Brown v. R. R.*, 165-392; *Barelliff v. R. R.*, 168-268; *Leary v. Comrs.*, 172-25; s. c., 174-46. When lands of lower proprietor are damaged by improper drainage of upper proprietor, he may bring action for damages or proceed under this section: *Briscoe v. Parker*, 145-14.

When the upper proprietor has constructed a drain or canal for his own convenience, without interfering with the rights of the lower proprietor, he is under no obligation to maintain the same for any incidental benefit to the lower proprietor: *Canal Co. v. Burnham*, 147-41. Where the owner of land has constructed a drainage system and the land is subsequently divided, the owners of the different parts are entitled to the benefits and liable for the maintenance of the drainage system on their portions of the land: *Lamb v. Lamb*, 177-150.

This chapter applies only to artificial outlets made over land of another to reach a natural water-course: *Mizell v. McGowan*, 129-93.

Jurisdiction of clerk: *Durden v. Simmons*, 84-555. Former proceeding as an estoppel: *Adams v. Joyner*, 147-77. Where judge set aside report of commissioners because report did not comply with statute, and further found as a fact in his order that two of commissioners had been guilty of gross indiscretion, this court would not reverse his order, whether the report conformed to statute or not: *Porter v. Armstrong*, 139-179. This chapter is the chart which should guide commissioners, and that portion of the judge's order wherein he undertakes to instruct new commissioners as to their duties, should be set aside: *Ibid.* In a proceeding to drain lowlands, where the questions raised by answer are such as would be passed upon by commissioners, parties are not entitled to a jury trial, and clerk superior court should appoint commissioners: *Porter v. Armstrong*, 134-447.

Proper method to readjust and equalize assessments where canal is established and ownership of some of the land has been changed: *Staton v. Staton*, 148-490. When, upon petition of one or more parties under this section, leave was granted by county court to cut a canal across land of another for the purpose of drainage, the petitioners and their assignees, upon the report of the jury being confirmed, acquire not merely an easement, but title in fee to the land condemned: *Norfleet v. Cromwell*, 70-634. Two, or more, separate proprietors of land cannot sustain a joint petition for a ditch to drain their lands, without alleging that common ditch would drain the lands of all petitioners: *Shaw v. Burfoot*, 53-344.

The commissioners ordered under section constitute a separate and distinct tribunal, and an appeal (generally) from the county to the superior court is not an appeal from the report of such commissioners so as to vacate it: *Skinner v. Nixon*, 52-342.

In a petition to the county court for drainage through the lands of another it is for the jury to decide as to the necessity, the manner of construction, and the damages, and the court can only direct the verdict to be recorded or order a new jury: *Collins v. Haughton*, 26-420. And no appeal lies from the decision of the county court: *Ibid.*; *Stanly v. Watson*, 33-124.

5262. Duty of commissioners. The commissioners, or a majority of them, on a day of which each proprietor of land aforesaid is to be notified at least five days, shall meet on the premises and view the lands to be drained or embanked, and the lands through or on which the drain is to pass or the embankment to be erected, and shall determine and report whether the lands of the petitioner can be conveniently drained or embanked except through or on the lands of the defendants or some of them; and if they are of opinion that the same cannot be conveniently done except through or on such lands, they shall decide and determine the route of the canal, ditch, or embankment, the width thereof, and the depth or height, as the case may be, and the manner in which the same shall be cut or thrown up, considering all the circumstances of the case, and providing as far as possible for the effectual drainage or embankment of the water from the petitioner's land, and also securing the defendant's lands from inundation, and every other injury to which the same may be probably subjected by such canal, ditch, or embankment; and they shall assess, for each of the defendants, such damage as in their judgment will fully indemnify him for the use of his land in the mode proposed; but in assessing such damages, the benefit shall be deducted.

Rev., s. 3984; Code, s. 1298; R. C., c. 40, s. 2; 1795, c. 436; 1852, c. 57, ss. 1, 2.

Sections 5275, 5276 (Acts of 1889, c. 243) do not repeal this section, but leave in operation so much as is not repugnant thereto: *Worthington v. Coward*, 114-289. Section referred to in *Porter v. Armstrong*, 134-452.

5263. Report and confirmation; easement acquired; exceptions. The commissioners shall report in writing, under their hands, the whole matter to the court, which shall confirm the same, unless good cause be shown to the contrary; and on payment of the damages and costs of the proceedings the court shall order and decree that the petitioner may cut the canal or ditch, or raise the embankment in the manner reported and determined by the commissioners; and thereupon the petitioner shall be seized in fee simple of the easement aforesaid: Provided, that, without the consent of the proprietor, such canal, ditch, or embankment shall not be cut or raised through or on his yard or curtilage, nor be allowed when the same shall injure any mill, by cutting off or stopping the water flowing thereto; nor shall such dam be allowed so as to create a nuisance by stagnant water, or cut off the flow of useful springs or necessary streams of water, or stop any ditches of such proprietor when there is no freshet.

Rev., s. 3985; Code, s. 1299; R. C., c. 40, s. 3; 1795, c. 436, s. 2; 1835, c. 7; 1852, c. 57, ss. 1, 2.

Practice on appeal from clerk: *Worthington v. Coward*, 114-289.

As to title acquired hereunder, see *Norfleet v. Cromwell*, 70-634.

Section merely referred to in *Porter v. Armstrong*, 134-452.

Report of commissioners appointed to condemn lands and assess damages for purpose of drainage is, like the verdict of a jury, conclusive of facts therein ascertained, until set aside: *Railroad v. Ely*, 101-8.

Upon an application to condemn lands for purpose of drainage the issues of fact raised by the pleadings should be framed and settled by a jury; they cannot be raised or considered upon exceptions to the reports of the commissioners appointed to assess damages: *Ibid.*

5264. Width of right of way for repairs. The commissioners, when they may deem it necessary, shall designate the width of the land to be left on each side of the canal, ditch, or dam, to be used for the protection and reparation thereof, which land shall be altogether under the control and dominion of the owner of the canal, ditch, or dam, except as aforesaid: Provided, that in no case shall a greater width of land on both sides, inclusive of a dam, be taken than five times the base of such dam.

Rev., s. 3985a; Code, s. 1302; R. C., c. 40, s. 6.

Where, upon appeal from the report of commissioners to condemn land for drainage purposes, jury found that the amount of land condemned by them for the purpose of the protection and reparation of the ditches was unnecessary, it was proper for the court to remand the cause, with directions to constitute another commission: *Winslow v. Winslow*, 95-24.

5265. Right of owner to fence; entry for repairs. Any proprietor, through or on whose land such canal or ditch may be cut or embankment raised, may put a fence or make paths across the same, provided the usefulness thereof be not impaired; and the owner of the canal, ditch, or dam, his heirs and assigns, shall at all times have free access to the same for the purpose of making and repairing them; doing thereby no unnecessary damage to the lands of the proprietors.

Rev., s. 3986; Code, s. 1300; R. C., c. 40, s. 4; 1795, c. 436, s. 2; 1835, c. 7; 1852, c. 57, ss. 1, 2.

5266. Earth for construction of dam; removal of dam. The earth necessary for the erection of a dam may be taken from either side of it, or wherever else the commissioners may designate and allow. And such dam may be removed by the proprietor of the land, his heirs or assigns, to any other part of his lands, and he may adjoin any dam of his own thereto, if allowed by the court on a petition, and such proceedings therein as are provided in this chapter, as far as the same may apply to his case: Provided always, that the usefulness of the dam will not be thereby impaired or endangered.

Rev., s. 3987; Code, s. 1301; R. C., c. 40, s. 5.

5267. Earth from canal removed or leveled. The earth excavated from the canal or ditch shall be removed away or leveled as nearly as may be with the surface of the adjacent land, unless the commissioners shall otherwise specially allow.

Rev., s. 3988; Code, s. 1303; R. C., c. 40, s. 7.

5268. No drain opened within thirty feet. The proprietor of any swamp or flat lands through which a canal or ditch passes shall not have a right to open or cut any drain within thirty feet thereof but by the consent of the owner. Such proprietor, however, and other persons may cut into such canal or ditch in the manner hereinafter provided.

Rev., s. 3989; Code, s. 1304; R. C., c. 40, s. 8.

Section referred to in *Brooks v. Turner*, 61-310.

5269. Right to drain into canal. Any person desirous of draining into the canal or ditch of another person as an outlet may do so in the manner hereinbefore provided, and in addition to the persons directed to be made parties, all others shall be parties through whose lands, canals, or ditches the water to be drained may pass till it shall have reached the furthest artificial outlet. And the privilege of cutting into such canal or ditch may be granted under the same rules

and upon the same conditions and restrictions as are provided in respect to cutting the first canal or ditch: Provided, that no canal or ditch shall be allowed to be cut into another if thereby the safety or utility of the latter shall be impaired or endangered: Provided further, that if such impairing and danger can be avoided by imposing on the petitioner duties or labor in the enlarging or deepening such canal or ditch, or otherwise, the same may be done; but no absolute decree for cutting such second canal or ditch shall pass till the duties or work so imposed shall be performed and the effect thereof is seen, so as to enable the commissioners to determine the matter whether such second canal or ditch ought to be allowed or not: Provided, that any party to the proceeding may appeal from the judgment of the court rendered under this section to the superior court of the county at term-time, where a trial and determination of all issues raised in the pleadings shall be had as in other cases before a judge and jury.

Rev., s. 3990; Code, s. 1305; 1887, c. 222; R. C., c. 40, s. 9.

Section referred to in *Brooks v. Turner*, 61-310.

5270. Expense of repairs apportioned. Besides the damages which the commissioners may assess against the petitioner for the privilege of cutting into such canal or ditch, they shall assess and apportion the labor which the petitioner and defendants shall severally contribute towards repairing the canal or ditch into or through which the petitioner drains the water from his lands, and report the same to court; which, when confirmed, shall stand as a judgment of the court against each of the parties, his executors and administrators, heirs and assigns.

Rev., s. 3991; Code, s. 1306; R. C., c. 40, s. 10.

See *Worthington v. Coward*, 114-289. A report of commissioners which fails to assess and apportion that part of the labor which under this section is to be contributed by defendants is fatally defective: *Brooks v. Turner*, 61-309.

5271. Notice of making repairs. Whenever the canals or ditches for the reparation of which more than one person shall be bound under the provisions of the preceding section shall need to be repaired, any of the persons so bound may notify the others thereof, and of the time he proposes to repair the same; and thereupon each of the persons shall jointly work on the same and contribute his proportion of labor till the same be repaired or the work cease by consent.

Rev., s. 3992; Code, s. 1307; R. C., c. 40, s. 11.

5272. Judgment against owner in default; lien. In case the person so notified shall make default, any of the others may perform his share of labor and recover against him the value thereof, on a notice to be issued for such default, in which shall be stated on oath made before the clerk the value of such labor, and unless good cause to the contrary be shown on the return of the notice, the court shall render judgment for the same with interest and costs; which judgment shall be a lien upon the lands from the date of the performance of the work.

Rev., s. 3993; Code, s. 1308; 1899, c. 396; R. C., c. 40, s. 12.

Landowner is entitled to be heard before any specific amount is adjudged against him under an assessment: *Adams v. Joyner*, 147-77.

5273. Subsequent owners bound. All persons to whom may descend, or who may otherwise own or occupy lands drained by any canal or ditch, for the privi-

lege of cutting which any labor for repairing is assessed, shall contribute the same, and shall be bound therefor to all intents and purposes, and in the same manner and by the same judgment as the original party himself would be if he occupied the land.

Rev., s. 3994; Code, s. 1309; R. C., c. 40, s. 13.

Referred to in *Norfleet v. Cromwell*, 70-641. See, also, *Staton v. Staton*, 148-490.

5274. Amount of contribution for repair ascertained. Whenever there shall be a dam, canal, or ditch, in the repairing and keeping up of which two or more persons shall be interested and receive actual benefit therefrom, and the duties and proportion of labor which each one ought to do and perform therefor shall not be fixed by agreement or by the mode already in this subchapter provided for assessing and apportioning such labor, any of the parties may have the same assessed and apportioned by applying to a justice of the peace, who shall give all parties at least three days notice, and shall summon two disinterested freeholders who, together with the justice, shall meet on the premises and assess the damages sustained by the applicant, whereupon the justice shall enter judgment in favor of the applicant for damages or for work done on such ditch or lands. The costs of this proceeding shall be in the discretion of the justice.

Rev., s. 3995; Code, s. 1310; 1889, c. 101; R. C., c. 40, s. 14.

This section is constitutional: *Forehand v. Taylor*, 155-353; *Sanderlin v. Luken*, 152-738.

This proceeding is in the nature of a motion in the original cause to modify the decrees from time to time to promote the objects of the proceeding: *Staton v. Staton*, 148-490.

An action before a justice of the peace for drainage expenses, before proper proceedings to ascertain the share of the expense, will not bar a subsequent action after the assessment is properly made: *Forehand v. Taylor*, 155-353.

5275. Petition by servient owner against dominant owner. Any person owning lands lying upon any creek, swamp, or other stream not navigable, which are subject to inundation and which cannot be conveniently drained or embanked on account of the volume of water flowing over the same from lands lying above, and by draining the same the lands above will be benefited and better drained, such person may by petition apply to the superior court of the county in which the lands sought to be drained or embanked, or some part of such lands, lie, setting forth the particular circumstances of the case, the valuation of the lands to be drained or embanked, and what other lands above would be benefited, and who are the proprietors of such lands; whereupon a summons shall be served upon each of the proprietors, who are not petitioners, requiring them to appear before the court at a time to be named in the summons, which shall not be less than ten days from the service thereof, and upon such day the petition shall be heard and the court shall appoint three persons as commissioners, who shall, before entering upon the discharge of their duties, be sworn to do justice between the parties.

Rev., s. 4016; 1889, c. 253.

NOTE.—In *Lenoir county*, proceedings under this section may be had before a justice of the peace. Rev., s. 4016; 1891, c. 73.

For proceeding under this section, see *Adams v. Joyner*, 147-77. This section does not repeal sections 5261 et seq.: *Worthington v. Coward*, 114-289. See *Briscoe v. Parker*, 145-14; *Porter v. Armstrong*, 134-447.

5276. Commissioners to examine lands and make report. The commissioners, or a majority of them, on a day of which each proprietor is to be notified at least

five days, shall meet on the premises and view the land to be drained and the lands affected thereby, and shall determine and report whether the lands of the petitioner or petitioners ought to be drained exclusively by him or them, and if they are of the opinion that the same ought not to be drained exclusively at the expense of the petitioner or petitioners, they shall decide and determine the route of the canal, ditch, or embankment, the width thereof, and the depth and height, as the case may be, and the manner in which the same shall be cut or thrown up, considering all the circumstances of the case, and providing as far as possible for the effectual drainage of the petitioner's land, and the protection and benefit of the defendant's land; and they shall apportion the labor to be done or assess the amount to be paid by each of the owners of the lands affected by such canal, ditch, or embankment, towards the construction and keeping the same in repair, and report the same to the court, which, when confirmed, shall stand as a judgment of the court against each of the parties, his executors, administrators, heirs and assigns.

Rev., s. 4017; 1889, c. 253, s. 2.

NOTE.—In Lenoir and Beaufort counties, proceedings under this section had before justice of the peace; docketed judgment and execution provided for. Rev., s. 4017; 1891, c. 73, s. 2; P. L. 1911, c. 545.

See *Adams v. Joyner*, 147-77.

5277. Cost of repairs enforced by judgment. Whenever any such ditch, canal, or embankment shall need repairs or cleaning out, and any of the parties interested therein refuse to perform the labor apportioned to them, or refuse to contribute the amount assessed against them, the same shall be enforced in the manner hereinbefore provided for the joint repair of canals and ditches.

Rev., s. 4018; 1889, c. 253, s. 3.

Landowner is entitled to be heard before any amount is adjudged against him: *Adams v. Joyner*, 147-77.

5278. Obstructing canal or ditch dug under agreement. Where two or more persons have dug a canal or ditch along any natural drain or waterway under parol agreement, or otherwise, wherein all the parties shall have contributed to the digging thereof, if any servient or lower owner shall fill up or obstruct said canal or ditch without the consent of the higher owners and without providing other drainage for the higher lands, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not more than thirty days.

Rev., s. 3375; 1899, c. 255.

All parties must have contributed under a valid agreement to the lawful digging of a ditch or canal before this section will apply: *Porter v. Armstrong*, 129-101. Compare *Mullen v. Canal Co.*, 130-496.

5279. Right of dominant owner to repair. In the absence of any agreement for maintaining the efficiency of such ditch or canal, or should the servient owner neglect or refuse to clean out or aid in cleaning out the same through his lands, it shall be lawful for the dominant or higher owner, after giving three days notice to servient owner, to enter along such canal and not more than twelve feet therefrom and clean out or remove obstructions or accumulated débris therefrom at his own personal expense or without cost to the servient owner.

Rev., s. 4025; 1899, c. 255, s. 2.

Where a person enlarges a canal on the lands of another, under a void proceeding, he is a trespasser, and cannot claim credit for money spent thereon: *Porter v. Armstrong*, 129-101.

Acts 1899, c. 255 (sections 5278-5280), for reclaiming swamp or lowlands, applies only where all the parties contribute under a valid agreement to the lawful digging of a ditch or canal: *Ibid.*

5280. Canal for seven years necessity presumed; expense apportioned. After a canal has been dug along any natural depression or waterway and maintained for seven years, it shall be prima facie evidence of its necessity, and upon application to the clerk of the superior court of any landowner who is interested in maintaining the same, it shall be the duty of the clerk of the superior court to appoint and cause to be summoned three disinterested and discreet freeholders, who, after being duly sworn, shall go upon the lands drained or intended to be drained by such canal, and after carefully examining the same and hearing such testimony as may be introduced touching the question of cost of canal, the amount paid, and the advantages and disadvantages to be shared by each of the parties to the action, shall make their report in writing to the clerk of the superior court stating the facts and apportioning the cost of maintaining such canal among the parties to the action, and the cost of the action shall be divided in the same ratio; and their report when approved shall be properly registered by the clerk. The collection of cost and proportion of work on the canal shall be as prescribed in this subchapter.

Rev., s. 4026; 1899, c. 255, s. 3; 1917, c. 248, s. 1.

Meaning of "canal"; procedure under this section to apportion expense: *Forrest v. R. R.*, 159-547.

5281. Easement of drainage surrendered. If any persons, or those claiming through or under them, who have cut any ditch or canal into which any other person has been permitted to drain land under any proceeding authorized in this subchapter, shall desire to surrender their easement or right in such ditch or canal and be discharged from any judgment rendered and existing under such proceedings, such persons may on motion have such proceeding reinstated for hearing and file a petition therein setting forth such fact or any other grounds for relief thereunder, and upon proof satisfactory to the court that such petitioners have cut another ditch or canal which drains their lands formerly drained by the first ditch or canal, and have abandoned the use of it for any purpose of drainage, the court shall adjudge the easement or right of the petitioners surrendered and determined, and from that time the petitioners and their land shall forever be discharged and released from the judgment heretofore rendered in such former proceeding: Provided, however, that all parties then having an easement or right in such ditch or canal shall be served with notice of such petition twenty days before the hearing thereof.

Rev., s. 4027; 1887, c. 222, s. 3.

5282. Obstructing drain cut by consent. If any person shall stop or in any way obstruct the passage of the water in any ditch or canal having been cut through lands of any person by consent of owner of said land, until after giving the interested parties reasonable time to comply with the mode of proceedings provided

for the drainage of lowlands, he shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days.

Rev., s. 3376; 1891, c. 434.

5283. Protection of canals, ditches, and natural drains. If any person shall fell any tree in any ditch, canal, or natural drainway of any farm, unless he shall remove the same and put such ditch, canal, or natural drainway in as good condition as it was before such tree was so felled; or if any person shall stop up or fill in such ditch, canal, or drainway and thereby obstruct the free passage of water along the said ditch, canal, or drainway, unless the said person shall first secure the written consent of the landowner, and those damaged by such obstruction in said ditch, canal, and drainway, or unless such person so filling in and stopping up such ditch, canal, or drainway shall, upon the demand of the person so damaged, clean out and put the said ditch, canal, or drainway in as good condition as the same was before such filling in and stopping up of the said ditch, canal, or drainway happened, he shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten nor more than fifty dollars, or imprisoned not less than ten nor more than thirty days.

Rev., s. 3382; 1901, c. 478.

For special act as to Tyrrell county, see 1907, c. 438.

Part 2. Petition Under Agreement for Construction

5284. Procedure upon agreement. 1. *Agreement; names filed.* Whenever a majority of the landowners or the persons owning three-fifths of all the lands in any well-defined swamp or lowlands shall, by a written agreement, agree to give a part of the land situated in such swamp or lowlands as compensation to any person, firm, or corporation who may propose to cut or dig any main drainway through such swamp or lowlands, then the person, firm, or corporation so proposing to cut or dig such main drainway shall file with the clerk of the superior court of the county, or, if there be two or more counties, with the clerk of the superior court of either county in or through which the proposed canal or drainway is to pass, the names of the landowners, with the approximate number of acres owned by each to be affected by the proposed drainway who have entered into the written agreement with the person, firm, or corporation, together with a brief outline of the proposed improvement, and in addition thereto shall file with the clerk the names and addresses, as far as can be ascertained, of the landowners, with the number of acres owned by each of them to be affected by the proposed drainway, who have not made any agreement with the person, firm, or corporation proposing to do the improvement.

2. *Notice.* Upon the filing of such names, it shall be the duty of the clerk to forthwith issue a notice which shall be served by the sheriff to all landowners who have not made any agreement to appear before him at a certain date, which date shall be not less than ten and not more than twenty days from the service of such notice, or, in lieu of the personal service hereinabove required, it shall be sufficient for the clerk to publish in a newspaper published in the county once a week for four weeks a notice to all landowners who have not made any agree-

ment to appear before him at a certain date, which date shall be not less than thirty days and not more than forty days from the first publication of notice, at which time and place the landowners shall state their objections to the proposed improvement, and in addition thereto make an estimate of the amount of damage that might be done to the land owned by each of them on account of the proposed drainway.

3. *Hearing; viewers.* Upon the hearing it shall be the duty of the clerk of the superior court to forthwith appoint three disinterested persons, none of whom shall own land to be affected by such drainway, if requested by the person, firm, or corporation proposing to do the improvement, whose duty it shall be to familiarize themselves with the proposed improvement, view the premises of the landowners, estimating damages, and make an estimate themselves of the amount of damages that might accrue to the lands of each landowner filing objections on account of the proposed improvement, and report the same to the clerk of the superior court within fifteen days from the date of their appointment.

4. *Report; bond.* Immediately upon the filing of the reports the clerk of the superior court shall forthwith notify the person, firm, or corporation proposing to dig the drainway or canal of the estimated damages contained in the reports, and the person, firm, or corporation shall execute and deliver a bond in a surety company authorized to do business in the state of North Carolina in twice the sum total of the estimated amount of damages, which bond shall be payable to the clerk of the superior court and conditioned upon the payment to the landowners of the amount of damages that may be assessed in the manner hereinafter provided.

5. *Construction authorized.* Upon the execution and delivery to the clerk of the said bond, the person, firm, or corporation so proposing to cut or dig such main drainway shall be and they are hereby authorized to proceed with the cutting or digging of the drainway through any lands in its proposed course, whether the owners of the land may have consented thereto or not, and the person, firm, or corporation so proposing to cut or dig the drainway shall have the proper and necessary right of way for that purpose and for all things incident thereto through any lands or timbers situated in such swamp or lowlands.

1917, c. 273, s. 1.

Sections 5284-5289 take the place of the act of 1915, c. 141, which was declared unconstitutional, in *Lang v. Development Co.*, 169-662.

5285. Recovery for benefits; payment of damages. After the drainway herein provided for shall be completed the person, firm, or corporation cutting or digging the same shall be entitled to recover of the landowners owning that part of the land with reference to which no contract for compensating those cutting or digging the drainway may have been made, an amount equal to the benefits to accrue to such lands by reason of the drainway, and shall be required by the clerk of the superior court to pay to any landowner the amount of damages in excess of benefits which may be done to the land, to be determined in the manner hereinafter provided: Provided, that the recovery from any owner of the land shall be limited to the benefits to accrue to that land owned by such person, and situated in such swamp or lowlands or adjacent thereto; and Provided further,

that the amount to be so recovered as herein provided for until fully paid shall be and constitute a lien upon such land, the lien to be in force regardless of who may own the land at the time the amount to be recovered as compensation for digging or cutting the drainway shall be determined.

1917, c. 273, s. 2.

5286. Notice to landowners; assessments made by viewers. After the completion of the main drainway, upon the application of the person, firm, or corporation, or their heirs or assigns, digging or cutting the same, the clerk of the superior court of the county in which any land through which the drainway may pass is situated shall issue a notice to be served by the sheriff upon any person who may have failed to agree with the person, firm, or corporation digging or cutting such drainway, upon a compensation to be paid by the landowner for the digging or cutting of such drainway, notifying the landowner that on a certain day, which shall be named in the notice and not less than twenty days from the date of the issuing of the notice, the clerk of the superior court will appoint three competent and disinterested persons, one of whom may be a surveyor, and none of whom shall own land to be affected by the drainway, to view the land so drained and for which no compensation for the drainage may have been agreed upon as aforesaid, and report to the clerk of the superior court what amount shall be paid therefor by the various landowners who may have failed to arrange for and agree upon the compensation for the drainage as aforesaid, and the amount of damages in cases where the damages have exceeded the benefits, which shall be paid to the landowners by the person, firm, or corporation cutting or digging such canal or drainway. In making the appointment of the viewers the clerk of the superior court shall hear any objections which may be advanced by those interested to any of the persons the clerk may consider to be appointed as viewers, but the clerk shall name those whom he considers best qualified.

1917, c. 273, s. 3.

5287. Report filed; appeal and jury trial. A report signed by two of the persons appointed as viewers shall be entered by the clerk as report of the viewers, and from the report any landowner affected thereby and the person, firm, or corporation digging or cutting such drainway shall have the right of appeal and the right to have any issue arising upon the report tried by a jury, provided exceptions shall be filed to the report within twenty days after the filing of the report with the clerk, in which exceptions so filed may be a demand for a jury trial. If a jury trial be demanded, the clerk shall transfer the proceedings to the civil-issue docket and it shall be heard as other civil actions. If no jury trial be demanded, the clerk shall hear the parties upon the exceptions filed, and appeal may be had as in special proceedings, but no jury trial shall be had unless demanded as herein provided for.

1917, c. 273, s. 4.

5288. Confirmation of report. Unless an appeal shall be taken by any person affected by the report, or by the person, firm, or corporation cutting or digging the drainway, and a jury trial demanded within twenty days after the report shall be filed with the clerk, in all of which appeals exceptions shall be filed, the clerk of the superior court shall confirm the report of the jury; if exceptions

shall be filed and no demand for a jury trial shall be made, the clerk shall hear the exceptions as in other cases of special proceedings, and judgment entered accordingly. If the report of the viewers be confirmed by the clerk because no exceptions or demand for a jury trial were filed within twenty days, the judgment of confirmation shall be the judgment of the court, and any judgment herein entered against the person, firm, or corporation cutting or digging the drainway shall be a judgment against the person, firm, or corporation and the surety on its bond given as hereinabove provided.

1917, c. 273, s. 5.

5289. Payment in installments. The amount to be recovered from any person as compensation for digging or cutting the drainway after the amount shall be definitely determined as herein provided for, shall be payable in five equal annual installments, the first payable one year from the filing of the report of the viewers with the clerk of the superior court, and one payment on the same day of each year thereafter until the full amount be paid. The amount to be recovered from the person, firm, or corporation cutting or digging the drainway, on account of any damages in excess of benefits to the lands of any landowner, shall be payable in one installment, which shall be due and payable one year from the filing of the report of the viewers with the clerk of the superior court.

1917, c. 273, s. 6.

ART. 2. JURISDICTION IN COUNTY COMMISSIONERS

5290. Petition filed; board appointed; refusal to serve misdemeanor. Upon the petition of three citizens in any county to the county commissioners, petitioning for the draining of any creek, swamp, or branch, either upon the plea of health or to promote and advance the agricultural interests of the farmers who may own lands lying on such creek, swamp, or branch petitioned to be drained, the county commissioners shall within ten days after the filing of such petition order the county surveyor to summon three disinterested freeholders, good and lawful men of intelligence and discretion, who shall constitute a board, and the county surveyor shall be the chairman of such board; and the chairman shall give all persons who may be interested in having such creek, swamp, or branch drained three days notice of the time and place of the meeting of the board: Provided, the petitioners shall deposit with the county treasurer the sum of twenty-five dollars for the payment of current expenses not otherwise provided for in this article. Any person duly summoned by the county surveyor to act as a commissioner for the drainage of any such creek, swamp, or branch, who shall refuse to serve, shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days.

Rev., ss. 3379, 4011; 1887, c. 267.

NOTE.—The provisions of this article also apply to lakes in Hyde County. 1901, c. 166.

5291. Duty of board; refusal to comply with their requirements misdemeanor. The board provided for in the preceding section shall meet at the call of the chairman and shall proceed to inspect and examine the lands as described in the petition to be drained, and the board shall have power to summon witnesses, administer oaths, and take testimony, and if the board decides that the lands specified in the petition shall be drained, either upon the plea of health or for the

benefit of the farms lying on or contiguous to such water-course, then the board shall select a place at which the ditch shall be begun. They shall also decide the depth and width of the ditch to be dug, and shall proceed to survey, locate, lay off, and mark the course of the ditch, and the board shall assign to the landowners the amount of labor to be performed and the amount of money to be paid for the purpose of defraying the necessary expenses by each landowner in proportion to the amount of lands drained or pro rata benefits received by the drainage of such lands, and the board shall specify the time in which the work so assigned shall be completed: Provided, no one shall be required to commence on the work assigned to him until the person next below him shall have completed his work in accordance with the specifications of the board. If any person shall refuse to comply with any of the requirements of the board he shall be guilty of a misdemeanor and fined not exceeding two hundred dollars, or imprisoned not exceeding two years.

Rev., ss. 3377, 4012; 1887, c. 267, ss. 2, 7.

5292. Report filed. The board shall make a written report to the county commissioners showing all the acts and decisions of the board as to the length, depth, and width of the ditch, the names of all the owners of the lands that will be drained, and the amount of work to be performed and the amount of money to be paid by each person benefited by such drainage. But in case the board determines that the lands described in the petition shall not be drained, then the expenses of the board shall be paid out of the funds deposited with the county treasurer by the petitioners.

Rev., s. 4013; 1887, c. 267, s. 3.

5293. Owners to keep ditch open. All persons whose lands shall be drained under the provisions of this article shall keep the ditch on his land clear of all rafts of logs, brush, or any trash that will obstruct the flow of water through the ditch.

Rev., s. 4014; 1887, c. 267, s. 4.

5294. Compensation of board. The compensation of the board shall be as follows: The county surveyor shall receive three dollars per day and the other members shall receive one dollar and fifty cents per day while engaged in the duties imposed in this chapter.

Rev., s. 4015; 1887, c. 267, s. 5.

SUBCHAPTER II. DRAINAGE BY CORPORATION

ART. 3. MANNER OF ORGANIZATION

5295. Petition filed in superior court. Any proprietor in fee of swamp lands, which cannot be drained except by cutting a canal through the lands of another or other proprietor in fee, situated at a lower level and which would also be materially benefited by the cutting of such canal, who desires that such canal be cut on the terms on which it is hereinafter allowed, may apply by petition, setting forth the facts, to the superior court of the county in which any of the lands through which the canal will pass may lie.

Rev., s. 3996; Code, s. 1311; 1868-9, c. 164, s. 2.

Jurisdiction, see *Durden v. Simmons*, 84-555. **Necessity of notice to other landowners:** *Gamble v. McCrady*, 75-509.

Constitutionality of drainage acts: *Canal Co. v. Whitley*, 172-100; *Brown v. Keener*, 74-714; *Norfleet v. Cromwell*, 70-634; *Pool v. Trexler*, 76-297. See section 5312.

See *Mizell v. McGowan*, 120-134; *Porter v. Armstrong*, 134-447; *Canal Co. v. McAlister*, 74-161.

5296. Commissioners appointed; report required. On the establishment by the petitioner of his allegations, the court shall appoint three persons as commissioners who, having been duly sworn, shall examine the premises and inquire and report—

1. Whether the lands of the petitioner can be conveniently drained otherwise than through those of some other person.

2. Through the lands of what other persons a canal to drain the lands of the petitioner should properly pass, considering the interests of all concerned.

3. A description of the several pieces of lands through which the canal would pass, and the present values of such portions of the pieces of lands as would be benefited by it, and the reasons for arriving at the conclusion as to the benefit.

4. The route and plan of the canal, including its breadth, depth, and slope, as nearly as they can be calculated, with all other particulars necessary for calculating its cost.

5. The probable cost of the canal and of a road on its bank, and of such other work, if any, as may be necessary for its profitable use.

6. The proportion of the benefit (after a deduction of all damages) which each proprietor would receive by the proposed canal and a road on its bank if deemed necessary, and in which each ought, in equity and justice, to pay toward their construction and permanent support.

7. With their report they shall return a map explaining, as accurately as may be, the various matters required to be stated in their report.

Rev., s. 3997; Code, s. 1312; 1868-9, c. 164, s. 3.

Report of commissioners, assessing persons for benefits accruing to their lands, from the operations of plaintiff canal company, should have been confirmed by court as to those defendants who did not object; but as to those who did, court should have proceeded to try issues involved in the controversy: *Canal Co. v. McKeithan*, 89-52.

Notice of the time to appoint the assessment commissioners need not be given to the landowners; and the assessment made is presumed to be regular and correct and cannot be attacked collaterally: *Canal Co. v. Whitley*, 172-100.

5297. Surveyor employed. The commissioners may employ a surveyor to prepare the map required to accompany their report.

Rev., s. 3998; Code, s. 1313; 1868-9, c. 164, s. 4.

5298. Confirmation of report. If it appear that the lands on the lower level will be increased in value twenty-five per cent or upwards by the proposed improvement, within one year after the completion thereof, and that the cost of making such improvement will not exceed three-fourths of the present estimated value of the land to be benefited, and that the proprietors of at least one-half in value of the land to be affected consent to the improvement, the court may confirm such report, either in full or with such modifications therein as shall be just and equitable.

Rev., s. 3999; Code, s. 1314; 1868-9, c. 164, s. 5.

5299. Proprietors become a corporation. Upon a final adjudication, confirming the report, the proprietors of the several pieces of land adjudged to be benefited by the improvement shall be declared a corporation, of which the capital stock shall be double the estimated cost of the improvements, and in which the several owners of the land adjudged to be benefited shall be corporators, holding shares of stock in the proportions in which they are adjudged liable for the expense of making and keeping up the improvement.

Rev., s. 4000; Code, s. 1315; 1868-9, c. 164, s. 6.

5300. Corporate name; officers; powers. The person assessed to pay the highest sum shall be president of the company until another shall be elected; he shall, or in case of his refusal or an unreasonable delay, any other stockholder may, call a meeting of the corporators. The corporators shall choose a corporate name, elect a president and such other officers as may be necessary, and make all by-laws and regulations, not contrary to law, which may be necessary or proper for effecting the purposes of the corporation; they shall fix the number of shares of stock, and assign to each proprietor his proper number; they shall assess the sums which shall be payable by each proprietor, and to ascertain the time and mode of payment, in every meeting each proprietor shall vote once for each share owned by him.

Rev., s. 4001; Code, s. 1316; 1868-9, c. 164, s. 7.

5301. Incorporation of canal already constructed. Whenever the proprietors of any canal already cut shall desire to become incorporated, any number of the proprietors, not less than one-third in number, may file their petition before the clerk of the superior court of the county in which the canal is located, or in either county, where the canal may be located in more than one county, setting forth the names of the proprietors, the length and size of the canal, the name of the owners of land draining in such canal, and the quantity of land tributary thereto. And upon filing the petition, summons shall issue to all parties having an easement in the canal, returnable as in other special proceedings; upon the return thereof, or upon a day fixed by the clerk for hearing same, all owners of the canal may become corporators therein, and upon failure of any to avail themselves of that right, they shall not be entitled to become corporators, except under such by-laws and regulations as such corporation shall make and declare. But those who fail to avail themselves of the benefit of this subchapter shall not be deprived of their easement in the canal, but shall enjoy the same upon payment to the corporation of the assessment made upon them pro rata with the corporators; such assessment shall be made on the land tributary to the canal and apportioned pro rata to each owner thereof; it shall be made by the corporation on ten days notice to each owner of the land, under such rules and regulations as the by-laws may prescribe; but any person dissatisfied therewith shall have the right to appeal to a jury at the regular term of the superior court of the county, and the amount of damages assessed shall be a first lien on the land of the owner against whom judgment shall be rendered: Provided, that in making such assessment upon landowners who are not members of the corporation it shall be unlawful to charge in such assessment any charges or per diem

pay for the officers of such canal company against the owner of such land, and any such attempt to charge the salaries or per diem of officers of the canal company in such assessment shall render the same void.

Rev., s. 4008; 1889, c. 380; 1901, c. 670.

ART. 4. RIGHTS AND LIABILITIES IN THE CORPORATION

5302. Shares of stock annexed to land. The ownership of the shares of stock is indissolubly annexed to the ownership of the pieces of land adjudged to be benefited by the improvement; and such shares, or a part thereof proportionate to the area of such land that may descend or be conveyed for any longer time than three years, shall, upon such descent or conveyance, descend and pass with the land, even although such shares be not mentioned in the deed of conveyance, and although their transfer be forbidden by such deed so that every owner of such land in possession, except tenant for a term of years, not exceeding three, and every owner in reversion or remainder after a term not exceeding three years, shall, during his ownership, be entitled to all the rights and privileges and be subject to all the obligations and burdens of a corporator. Every attempted sale of shares otherwise than as annexed to the land shall be void.

Rev., s. 4002; Code, s. 1317; 1868-9, c. 164, s. 8.

5303. Shareholders to pay assessments. Every corporator shall be bound to obey the lawful by-laws of the company, and pay all dues lawfully assessed on him: Provided, he shall in no case pay more than his proportion of the expenses as fixed by this subchapter; and such dues may be collected in the corporate name in any court having jurisdiction; and every assessment duly docketed in the county where the land to be affected lies shall be a lien on the lands of the debtor which are connected with the corporation from the date of such docketing.

Rev., s. 4003; Code, s. 1318; 1868-9, c. 164, s. 9.

The action of the corporation in making assessments, if not void upon its face, cannot be attacked collaterally; and if no method of review is provided, it may be reviewed by certiorari: *Canal Co. v. Whitley*, 172-100. The assessment is not a debt in the sense that a personal judgment may be obtained, but a charge upon land to be enforced by docketing and execution: *Ibid.*; *Drainage Dist. v. Huffstetler*, 173-523. But see section 5362.

5304. Payment of dues entitles to use of canal. Every corporator paying his dues legally assessed without regard to the number of his shares, shall be entitled to the full and free use of the canal for drainage and navigation, and of the road for passage and transportation. By-laws may be made to regulate these rights, but not so as to produce an inequality.

Rev., s. 4004; Code, s. 1319; 1868-9, c. 164, s. 10.

5305. Rights of infant owners protected. If any proprietor whose lands are adjudged to be benefited by a canal shall be an infant, no process shall be issued against him during his minority, or within twelve months thereafter, to enforce payment of any assessment, and he may, at any time within such twelve months, apply to have any order, judgment, or decree made against him set aside as to him. If the infant or his guardian shall, during his minority, and the twelve months next thereafter, pay the dues assessed on him, he shall have all the rights and privileges of a corporator, to be exercised through his guardian. If the infant shall fail to pay, he shall not have any such rights, but if no action to set

aside the judgment of the court creating the corporation shall have been brought by him as aforesaid, or upon the decision of such action against him, he shall be entitled to receive his proper share of stock and to possess all the rights and be bound by all the liabilities of a corporator, including a liability for assessments made during his minority, but not for interest on such, nor for any penalty for their prior nonpayment.

Rev., s. 4005; Code, s. 1320; 1868-9, c. 164, s. 11.

5306. Compensation for damage to lands. If any proprietor of lands shall be damaged by any improvement proposed, the commissioners shall so report, and he shall be entitled to be compensated as may be just by the proprietor whose lands are benefited in proportion to the benefit to them respectively; but in estimating such damage the benefit shall be deducted, and such proprietor shall be entitled to all the rights and privileges of a corporation as respects the use of the improvement, but shall not be entitled to a vote, or be bound for the assessment.

Rev., s. 4006; Code, s. 1321; 1868-9, c. 164, s. 12.

5307. Dissolution of corporation. If, from any cause, the canal or other improvement shall become or shall prove to be valueless, any corporator may apply as is provided in other cases of special proceedings, and the court may dissolve the corporation created in connection with it.

Rev., s. 4007; Code, s. 1322; 1868-9, c. 164, s. 13.

5308. Laborer's lien for work on canal. Whenever work or repairs shall be done on such canal and any of the parties owning lands liable to be assessed for such work or repairs shall fail or refuse to pay the amount assessed upon their lands, then and in that event the laborers performing such work shall have a lien upon such land to the extent of the amount assessed against the same by the corporation, and such lien may be enforced in the same manner as provided by the laws of this state for the enforcement of laborers' liens.

Rev., s. 4009; 1899, c. 600, s. 2.

5309. Penalty for nonpayment of assessments. Whenever any person whose lands have been adjudged liable to contribute to the maintenance or repair of such canal shall fail or refuse to pay the amount assessed against his land for such maintenance or repair for thirty days after such payment has been demanded by the company, then the company may give such person notice in writing of its intention to cut off his right of drainage into the canal, and if such person shall still neglect and refuse to pay such assessment for thirty days after such notice, then the company may proceed to so obstruct and dam up the ditches of such delinquent as will effectually prevent his draining into the canal.

Rev., s. 4010; 1899, c. 600, s. 3.

5310. Corporation authorized to issue bonds. The corporations organized under this subchapter are authorized to issue bonds to such an amount and in such denomination as they may elect, payable at such times as may be provided, and to sell the same at not less than par, the proceeds of the sale of such bonds to be used for the payment of the costs of survey and construction and maintenance of the canal. The bonds shall constitute a lien upon the lands drained or improved by the canal as described in the reports of the commissioners.

1908, c. 75, s. 1.

5311. Payment of bonds enforced. Upon default of the payment of the interest or principal of such bonds, the holders of the bonds of the corporations organized under this subchapter shall have a right to enforce the lien created by the preceding section by civil actions in the superior courts of the state.

1908, c. 75, s. 2.

SUBCHAPTER III. DRAINAGE DISTRICTS

ART. 5. ESTABLISHMENT OF DISTRICTS

5312. Jurisdiction to establish districts. The clerk of the superior court of any county in the state of North Carolina shall have jurisdiction, power, and authority to establish levee or drainage districts in his county, and to locate and establish levees, drains, or canals, and cause to be constructed, straightened, widened, or deepened any ditch, drain or watercourse, and to build levees or embankments and erect tide gates and pumping plants for the purpose of draining and reclaiming wet, swamp, or overflowed lands; and it is hereby declared that the drainage of swamps and the drainage of the surface water from agricultural lands and the reclamation of tidal marshes shall be considered a public benefit and conducive to the public health, convenience, utility, and welfare.

1909, c. 442, s. 1.

Nature and purpose of system explained: In re Drainage District, 162-127. **The Drainage Act is constitutional:** Lumber Co. v. Drainage Comrs., 174-647; Banks v. Lane, 170-14; Shelton v. White, 163-90; Newby v. Drainage District, 163-24; In re Drainage District, 162-127; Comrs. v. Webb, 160-595; Forehand v. Taylor, 155-353; Sanderlin v. Luken, 152-738. **The Drainage Act is a police regulation and proceedings thereunder are an exercise of the power of eminent domain:** Taylor v. Comrs., 176-217; Lang v. Development Co., 169-662; Shelton v. White, 163-90; Newby v. Drainage District, 163-24; Comrs. v. Webb, 160-594.

Drainage districts are not municipal corporations, but are regarded as public quasi-corporations, partaking to some extent the character of a governmental agency: Newby v. Drainage District, 163-24; Sanderlin v. Luken, 152-738. **They are not a governmental agency strictly, but are quasi-public corporations like railroads, having the power of eminent domain and a taxing power for a special purpose:** Leary v. Comrs., 172-25; Drainage Comrs. v. Farm Association, 165-697; Drainage Comrs. v. Webb, 160-594.

Drainage act for Mattamuskeet Lake construed, in Carter v. Comrs., 156-183.

5313. Venue; special proceeding. When the lands proposed to be drained and created into a drainage district are located in two or more counties, the clerk of the superior court of either county shall have and exercise the jurisdiction herein conferred, and the venue shall be in that county in which the petition is first filed. The law and the rules regulating special proceedings shall be applicable in this proceeding, so far as may be practicable; and the proceedings hereunder may be ex parte or adversary.

1909, c. 442, ss. 2, 38.

The proceeding is in the nature of a proceeding in rem: Banks v. Lane, 170-14; Staton v. Staton, 148-490. **For construction of proceeding, see section 5379.**

5314. Petition filed. A petition signed by a majority of the resident land-owners in a proposed drainage district or by the owners of three-fifths of all the land which will be affected or assessed for the expense of the proposed improvements may be filed in office of the clerk of the superior court of any county in which a part of the lands is located, setting forth that any specific body or

district of land in the county and adjoining counties, described in such a way as to convey an intelligent idea as to the location of such land, is subject to overflow or too wet for cultivation, and the public benefit or utility or the public health, convenience or welfare will be promoted by draining, ditching, or leveeing the same or by changing or improving the natural watercourses, and setting forth therein, as far as practicable, the starting point, route, and terminus and lateral branches, if necessary, of the proposed improvement.

1909, c. 442, s. 2.

Regular proceedings to establish district explained: *Griffin v. Comrs.*, 169-642; *Shelton v. White*, 163-90. The petition should be filed by a majority of the landowners in the district or by the owners of three-fifths of the land to be affected: *Banks v. Lane*, 170-14; s. c., 171-505. The lands to be affected should be described: *Lumber Co. v. Comrs.*, 173-117. The proceeding is intended to be flexible in its nature, and changes may be made from time to time as the circumstances may require: *In re Drainage District*, 175-270; *Staton v. Staton*, 148-490; *Adams v. Joyner*, 147-77.

5315. Bond filed and summons issued. Upon filing with the petition a bond for the amount of fifty dollars per mile for each mile of the ditch or proposed improvement, signed by two or more sureties or by some lawful and authorized surety company, to be approved by the clerk of superior court, conditioned for the payment of all costs and expenses incurred in the proceeding in case the court does not grant the prayer of the petition, the clerk shall issue a summons to be served on all the defendant landowners who have not joined in the petition and whose lands are included in the proposed drainage district. The summons may be served by publication as to any defendants who cannot be personally served as provided by law.

1909, c. 442, s. 2.

The parties to the proceeding are the petitioners and, as defendants, the landowners in the district who have not joined in the petition: *Banks v. Lane*, 170-14; s. c., 171-505; *Lumber Co. v. Comrs.*, 173-117. Mortgagees and lienholders are not necessary parties: *Taylor v. Comrs.*, 176-217; *Townsend v. Drainage Comrs.*, 174-556; *Banks v. Lane*, 170-14; s. c., 171-505; *Drainage Comrs. v. Farm Association*, 165-697. Owners of timber leases are not included as parties: *Lumber Co. v. Comrs.*, 173-117.

A landowner who has not joined in the petition nor been served with summons is not affected by the proceeding: *Lumber Co. v. Comrs.*, 173-117. It is admissible to notify the owner in possession and have the land assessed in this proceeding, *nunc pro tunc*: *Taylor v. Comrs.*, 176-217.

5316. Publication in case of unknown owners. If at the time of the filing of the petition, or at any time subsequent thereto, it shall be made to appear to the court by affidavit or otherwise that the owners of the whole or any share of any tracts of land, whose names are unknown, and cannot after due diligence be ascertained by the petitioners, the court shall order a notice in the nature of a summons to be given to all such persons by a publication of the petition, or of the substance thereof, and describing generally the tracts of land as to which the owners are unknown, with the order of the court thereon, in some newspaper published in the county wherein the land is located, or in some other county if no newspaper shall be published in the first-named county, which newspaper shall be designated in the order of the court, and a copy of such publication shall be also posted in at least three conspicuous places within the boundaries of the proposed district, and at the courthouse door of the county. Such publication

in a newspaper and by posting shall be made for a period of four weeks. After the time of publication shall have expired, if no person claiming and asserting title to the tracts of land and entitled to notice shall appear, the court in its discretion may appoint some disinterested person to represent the unknown owners of such lands, and thereupon the court shall assume jurisdiction of the tracts of land and shall adjudicate as to such lands to the same extent as if the true owners were present and represented, and shall proceed against the land itself. If at any time during the pendency of the drainage proceeding the true owners of the lands shall appear in person, they may be made parties defendant of their own motion and without the necessity of personal service, and shall thereafter be considered as parties to the proceeding; but they shall have no right to except to or appeal from any order or judgment theretofore rendered, as to which the time for filing exceptions on notice shall have expired.

1911, c. 67, s. 1.

This publication is sufficient notice, and every presumption is in favor of the regularity of the judgment rendered: *Banks v. Lane*, 170-14; *s. c.*, 171-505; *Taylor v. Comrs.*, 176-217.

5317. Board of viewers appointed by clerk. Upon the return day the clerk shall appoint a disinterested and competent civil and drainage engineer and two resident freeholders of the county or counties in which the lands are located as a board of viewers to examine the lands described in the petition and make a preliminary report thereon. The drainage engineer shall be appointed upon the recommendation of the state geologist; and no member of the board of viewers so appointed shall own any land within the boundaries of the proposed district. In the selection of the two members of the board of viewers, other than the engineer, the clerk before making the appointment shall make careful inquiry into the character and qualifications of the proposed members, to the end that the members so appointed shall possess the necessary character, capacity, fitness, and impartiality for the discharge of their important duties.

1909, c. 442, s. 2; 1917, c. 152, s. 1.

The repeal of the act of 1911, c. 67, s. 14, which authorized the payment of expenses of the engineer by the board of agriculture for the benefit of the drainage district, did not prevent a recovery of the amount so paid: *Board of Agriculture v. Drainage District*, 177-222. Section referred to in *Griffin v. Comrs.*, 169-642.

5318. Attorney for petitioners. The petitioners shall select some learned attorney or attorneys to represent them, who shall prosecute the drainage proceeding and advise with the petitioners and board of viewers, and shall agree upon the compensation for his professional services up to the time when the district shall be established and the board of drainage commissioners elected, or as nearly so as the same may be approximated. If the petitioners are unable to agree upon the selection of an attorney or attorneys, the selection may be made by the clerk of the court. The foregoing provision shall not interfere with the right of any individual petitioner in the selection of an attorney to represent his individual interests if he shall deem the same desirable or necessary.

1917, c. 152, s. 1.

5319. Estimate of expense and manner of payment. The clerk shall make an estimate of the aggregate sum of money which shall appear to be necessary to pay all the expenses incident to the performance of the duties by the board of

viewers, including the compensation of the drainage engineer and his necessary assistants, and also including the sum for the compensation of the attorney for the district, and such court costs as may probably accrue, which estimates shall embrace the period of services up to and including the establishment of the drainage district and the selection and appointment of the board of drainage commissioners. The clerk shall then estimate the number of acres of land owned or represented by the petitioners, as nearly so as may be practicable without actual survey, and shall assess each acre so represented a level rate per acre, to the end that such assessment will realize the sum of money which he has estimated as necessary to pay all necessary costs of the drainage proceeding up to the time of the appointment of the drainage commissioners, as above provided. The board of viewers, including the drainage engineer, shall not be required to enter upon the further discharge of their duties until the amount so estimated and assessed shall be paid in cash to the clerk of the court, which shall be retained by him as a court fund, and for which he shall be liable in his official capacity, and he shall be authorized to disburse the same in the prosecution of the drainage proceeding. Unless all the assessments shall be paid within a time to be fixed by the court, which may be extended from time to time, no further proceedings shall be had, and the proceeding shall be dismissed at the cost of the petitioners. If the entire sum so estimated and assessed shall not be paid to the clerk within the time limited, the amounts so paid shall be refunded to the petitioners pro rata after paying the necessary costs accrued. Nothing herein contained shall prevent one or more of the petitioners from subscribing and paying any sum in addition to their assessment in order to make up any deficiency arising from the delinquency of one or more of the petitioners. When the sum of money so estimated shall be paid, the board of viewers shall proceed with the discharge of their duties, and in all other respects the proceeding shall be prosecuted according to the law. After the district shall have been established and the board of drainage commissioners appointed, it shall be the duty of the board of drainage commissioners to refund to each of the petitioners the amount so paid by them as above provided, out of the first moneys which shall come into the hands of the board from the sale of bonds or otherwise, and the same shall be included in ascertaining the total cost of improvement.

1917, c. 152, s. 1.

5320. Examination of lands, and preliminary report. The board of viewers shall proceed to examine the land described in the petition, and other land if necessary to locate properly such improvement or improvements as are petitioned for, along the route described in the petition, or any other route answering the same purpose if found more practicable or feasible, and may make surveys such as may be necessary to determine the boundaries and elevation of the several parts of the district, and shall make and return to the clerk of the superior court within thirty days, unless the time shall be extended by the court, a written report, which shall set forth:

1. Whether the proposed drainage is practicable or not.
2. Whether it will benefit the public health or any public highway or be conducive to the general welfare of the community.
3. Whether the improvement proposed will benefit the lands sought to be benefited.

4. Whether or not all the lands that are benefited are included in the proposed drainage district.

They shall also file with this report a map of the proposed drainage district, showing the location of the ditch or ditches or other improvement to be constructed and the lands that will be affected thereby, and such other information as they may have collected that will tend to show the correctness of their findings.

1909, c. 442, s. 3.

See *Griffin v. Comrs.*, 169-642; *Shelton v. White*, 163-90; *In re Drainage District*, 162-127.

5321. First hearing of preliminary report. The clerk of the superior court shall consider this report. If the viewers report that the drainage is not practicable or that it will not benefit the public health or any public highway or be conducive to the general welfare of the community, and the court shall approve such findings, the petition shall be dismissed at the cost of the petitioners. Such petition or proceeding may again be instituted by the same or additional landowners at any time after six months, upon proper allegations that conditions have changed or that material facts were omitted or overlooked. If the viewers report that the drainage is practicable and that it will benefit the public health or any public highway or be conducive to the general welfare of the community, and the court shall so find, then the court shall fix a day when the report will be further heard and considered.

1909, c. 442, s. 4.

See *Griffin v. Comrs.*, 169-642; *Shelton v. White*, 163-90.

5322. Notice of further hearing. If the petition is entertained by the court, notice shall be given by publication for two consecutive weeks in some newspaper of general circulation within the county or counties, if one shall be published in such counties, and also by posting a written or printed notice at the door of the courthouse and at five conspicuous places within the drainage district, that on the date set, naming the day, the court will consider and pass upon the report of the viewers. At least fifteen days shall intervene between the date of the publication and the posting of the notices and the date set for the hearing.

1909, c. 442, s. 5.

Section referred to in *Banks v. Lane*, 170-14; s. c., 171-505; *Griffin v. Comrs.*, 169-642; *Shelton v. White*, 163-90.

5323. Further hearing, and district established. At the date appointed for the hearing the court shall hear and determine any objections that may be offered to the report of the viewers. If it appear that there is any land within the proposed levee or drainage district that will not be affected by the leveeing or drainage thereof, such lands shall be excluded and the names of the owners withdrawn from such proceeding; and if it shall be shown that there is any land not within the proposed district that will be affected by the construction of the proposed levee or drain, the boundary of the district shall be so changed as to include such land, and such additional landowners shall be made parties plaintiff or defendant, respectively, and summons shall issue accordingly, as hereinbefore provided. After such change in the boundary is made, the sufficiency of the petition shall be verified, to determine whether or not it conforms to the requirements hereinbefore provided. The efficiency of the drainage or levees may also

be determined, and if it appears that the location of any levee or drain can be changed so as to make it more effective, or that other branches or spurs should be constructed, or that any branch or spur projected may be eliminated or other changes made that will tend to increase the benefits of the proposed work, such modification and changes shall be made by the board. The engineer and the other two viewers may attend this meeting and give any information or evidence that may be sought to verify and substantiate their report. If necessary, the petition, as amended, shall be referred by the court to the engineer and two viewers for further report. The above facts having been determined to the satisfaction of the court, and the boundaries of the proposed district so determined, it shall declare the establishment of the drainage or levee district, which shall be designated by a name or number, for the object and purpose as herein set forth.

If any lands shall be excluded from the district because of the court having found that such lands will not be affected or benefited, and the names of the owners of such lands have been withdrawn from such proceeding, but such lands are so situated as necessarily to be located within the outer boundaries of the district, such fact shall not prevent the establishment of the district, and such lands shall not be assessed for any drainage tax; but this shall not prevent the district from acquiring a right of way across such lands for constructing a canal or ditch or for any other necessary purpose authorized by law.

1909, c. 442, s. 6; 1911, c. 67, s. 2.

See *Griffin v. Comrs.*, 169-642; *Shelton v. White*, 163-90. The fact that land in a smaller district is included in a larger district does not prevent the organization of the smaller district: *Drainage Comrs. v. Farm Assn.*, 165-697.

5324. Right of appeal. Any person owning lands within the drainage or levee district which he thinks will not be benefited by the improvement and should not be included in the district may appeal from the decision of the court to the superior court of such county, in term-time, by filing an appeal, accompanied by a bond conditioned for the payment of the costs if the appeal should be decided against him, for such sum as the court may require, not exceeding two hundred dollars, signed by two or more solvent sureties or in some approved surety company to be approved by the court.

1909, c. 442, s. 8.

Appeal provided for under this section and under section 5333. A party loses his right except as to subsequent changes by failing to appeal: *Drainage District v. Parks*, 170-435.

On appeal under this section the objector cannot contest the practicability of formation of the district, but only the question as to whether his land is benefited; and this may be an issue for a jury: *Griffin v. Comrs.*, 169-642; *Shelton v. White*, 163-90; *Parker v. Johnson*, 163-74. If objection is sustained, the court may exclude the land or retain it with compensation for damages: *Shelton v. White*, 163-90. Whether one who signed the petition can appeal from the preliminary order, see *Griffin v. Comrs.*, 169-642; *Shelton v. White*, 163-90.

5325. Condemnation of land. If it shall be necessary to acquire a right of way or an outlet over and through lands not affected by the drainage, and the same cannot be acquired by purchase, then and in such event the power of eminent domain is hereby conferred, and the same may be condemned. The owners of the land proposed to be condemned may be made parties defendant in the manner of an ancillary proceeding, and the procedure shall be substantially as pro-

vided by law for the condemnation of rights of way for railroads so far as the same may be applicable, and such damages as may be awarded as compensation shall be paid by the board of drainage commissioners out of the first funds which shall be available from the proceeds of sale of bonds or otherwise.

1909, c. 442, s. 7.

5326. Complete survey ordered. After the district is established the court shall refer the report of the engineer and viewers back to them to make a complete survey, plans, and specifications for the drains or levees or other improvements, and fix a time when the engineer and viewers shall complete and file their report, not exceeding sixty days.

1909, c. 442, s. 9.

See *Griffin v. Comrs.*, 169-642; *Shelton v. White*, 163-90.

5327. Nature of the survey. The engineer and viewers shall have power to employ such assistants as may be necessary to make a complete survey of the drainage district, and shall enter upon the ground and make a survey of the main drain or drains and all its lateral. The line of each ditch, drain, or levee shall be plainly and substantially marked on the ground. The course and distance of each ditch shall be carefully noted and sufficient notes made, so that it may be accurately plotted and mapped. A line of levels shall be run for the entire work and sufficient data secured from which accurate profiles and plans may be made. Frequent bench marks shall be established along the line, on permanent objects, and their elevation recorded in the field books. If it is deemed expedient by the engineer and viewers, other levels may be run to determine the fall from one part of the district to another. If an old watercourse, ditch, or channel is being widened, deepened, or straightened, it shall be accurately cross-sectioned, so as to compute the number of cubic yards saved by the use of such old channel. A drainage map of the district shall then be completed, showing the location of the ditch or ditches and other improvements and the boundary, as closely as may be determined by the records, of the lands owned by each individual landowner within the district. The location of any railroads or public highways and the boundary of any incorporated towns or villages within the district shall be shown on the map. There shall also be prepared to accompany this map a profile of each levee, drain, or watercourse, showing the surface of the ground, the bottom or grade of the proposed improvement, and the number of cubic yards of excavation or fill in each mile or fraction thereof, and the total yards in the proposed improvement and the estimated cost thereof, and plans and specifications, and the cost of any other work required to be done.

1909, c. 442, s. 10.

See *Griffin v. Comrs.*, 169-642; *Shelton v. White*, 163-90.

5328. Assessment of damages. It shall be the further duty of the engineer and viewers to assess the damages claimed by any one that is justly right and due to them for land taken or for inconvenience imposed because of the construction of the improvement, or for any other legal damages sustained. Such damage shall be considered separate and apart from any benefit the land would receive because of the proposed work, and shall be paid by the board of drainage commissioners when funds shall come into their hands.

1909, c. 442, s. 11; 1915, c. 238; 1917, c. 152, s. 16.

Act of 1915, c. 238, construed to amend s. 11 instead of s. 2 of 1909, c. 442: Toomey v. Lumber Co., 171-178.

This section gives landowner opportunity to obtain compensation for damages to land: Griffin v. Comrs., 169-642; Newby v. Drainage District, 163-24. All damage done to the owner's land is to be awarded, including timber destroyed: Lumber Co. v. Drainage Comrs., 174-647.

5329. Classification of lands. It shall be the further duty of the engineer and viewers to personally examine the land in the district and classify it with reference to the benefit it will receive from the construction of the levee, ditch, drain, or water-course or other improvement. In the case of drainage, the degree of wetness on the land, its proximity to the ditch or a natural outlet, and the fertility of the soil shall be considered in determining the amount of benefit it will receive by the construction of the ditch. The land benefited shall be separated in five classes. The land receiving the highest benefit shall be marked "Class A"; that receiving the next highest benefit, "Class B"; that receiving the next highest benefit, "Class C"; that receiving the next highest benefit, "Class D," and that receiving the smallest benefit, "Class E." The holdings of any one landowner need not be all in one class, but the number of acres in each class shall be ascertained, though its boundary need not be marked on the ground or shown on the map. The total number of acres owned by one person in each class and the total number of acres benefited shall be determined. The total number of acres of each class in the entire district shall be obtained and presented in tabulated form. The scale of assessment upon the several classes of land returned by the engineer and viewers shall be in the ratio of five, four, three, two, and one; that is to say, as often as five mills per acre is assessed against the land in "Class A," four mills per acre shall be assessed against the land in "Class B," three mills per acre in "Class C," two mills per acre in "Class D," and one mill per acre in "Class E." This shall form the basis of the assessment of benefits to the lands for drainage purposes.

1909, c. 442, s. 12.

Section referred to in Griffin v. Comrs., 169-642.

5330. Extension of time for report. In case the work is delayed by high water, sickness, or any other good cause, and the report is not completed at the time fixed by the court, the engineer and viewers shall appear before the court and state in writing the cause of such failure and ask for sufficient time in which to complete the work, and the court shall set another date by which the report shall be completed and filed.

1909, c. 442, s. 14.

5331. Final report filed; notice of hearing. When the final report is completed and filed it shall be examined by the court, and if it is found to be in due form and in accordance with the law it shall be accepted, and if not in due form it may be referred back to the engineer and viewers, with instructions to secure further information, to be reported at a subsequent date to be fixed by the court. When the report is fully completed and accepted by the court a date not less than twenty days thereafter shall be fixed by the court for the final hearing upon the report, and notice thereof shall be given by publication in a newspaper of general circulation in the county and by posting a written or printed notice

on the door of the courthouse and at five conspicuous places throughout the district, such publication to be made for at least two weeks before the final hearing. During this time a copy of the report shall be on file in the office of the clerk of the superior court, and shall be open to the inspection of any landowner or other person interested within the district.

1909, c. 442, s. 15.

When no newspaper is published in the county, publication at courthouse door and five places in district is sufficient: *Comrs. v. Engineering Co.*, 165-37. Notice may be waived: *Ibid.* Publication of notice is required so that all persons whose interests may be affected may have opportunity to be heard: *Banks v. Lane*, 170-14; s. c., 171-505; *Taylor v. Comrs.*, 176-217.

5332. Adjudication upon final report. At the date set for hearing any landowner may appear in person or by counsel and file his objection in writing to the report of the viewers; and it shall be the duty of the court to carefully review the report of the viewers and the objections filed thereto, and make such changes as are necessary to render substantial and equal justice to all the landowners in the district. If, in the opinion of the court, the cost of construction, together with the amount of damages assessed, is not greater than the benefits that will accrue to the land affected, the court shall confirm the report of the viewers. If, however, the court finds that the cost of construction, together with the damages assessed, is greater than the resulting benefit that will accrue to the lands affected, the court shall dismiss the proceedings at the cost of the petitioners, and the sureties upon the bond so filed by them shall be liable for such costs: Provided, that the state geological and economic survey may remit and release to the petitioners the costs expended by the board on account of the engineer and his assistants. The court may from time to time collect from the petitioners such amounts as may be necessary to pay costs accruing, other than costs of the engineer and his assistants, such amounts to be repaid from the special tax hereby authorized.

1909, c. 442, s. 16; 1915, c. 238, s. 2; 1917, c. 152, s. 16.

Practice under section explained: *Griffin v. Comrs.*, 169-642; *Shelton v. White*, 163-90; *In re Drainage District*, 162-127; *Parker v. Johnson*, 163-74. The final report so adopted is the chart to direct the drainage commissioners in constructing the work: *Griffin v. Comrs.*, 169-642. The judgment is an estoppel of record as to all matters involved affecting property rights: *Ibid.*

When the decree establishing the district does not contain restriction as to amount to be charged on land, those contained in the petition will not control: *Gibbs v. Drainage Comrs.*, 175-5. Such restrictions could not be enforced as an agreement between the parties; and the matter is *res judicata* as to another proceeding: *Mann v. Mann*, 176-353. (*Mattamuskeet Lake District.*) For other questions involved in such district, see *Carter v. Comrs.*, 156-183; *Caravan v. Comrs.*, 161-100.

5333. Appeal from final hearing. Any party aggrieved may, within ten days after the confirmation of the assessor's report, appeal to the superior court in term-time. Such appeal shall be taken and prosecuted as now provided in special proceedings. Such appeal shall be based and heard only upon the exceptions theretofore filed by the complaining party, either as to issues of law or fact, and no additional exceptions shall be considered by the court upon the hearing of the appeal.

1909, c. 442, s. 17; 1911, c. 67, s. 3.

A party failing to appeal loses his right to object except as to subsequent changes: Drainage Dist. v. Parks, 170-435; Lumber Co. v. Drainage Comrs., 174-647.

Any party interested may appeal, and he may have a jury trial as to benefits, costs and damages; if the objection is sustained, the court may exclude the land or retain it with compensation: Griffin v. Comrs., 169-642; Shelton v. White, 163-90. If a majority of the land-owners or the owners of three-fifths of the land object, the proceeding should be dismissed: Shelton v. White, 163-90.

The appeal is to be heard only on exceptions filed in the court below: In re Drainage District, 162-127. Incidental matters, as the classification of lands, location of ditches, etc., are questions of fact to be settled by the clerk, and to be reviewed on exceptions by the judge: Shelton v. White, 163-90.

5334. Compensation of board of viewers. The compensation of the engineer, including his necessary assistants, rodmen, and laborers, and also the compensation of the viewers, shall be fixed by the clerk. In fixing such compensation, particularly of the drainage engineer, the clerk shall confer fully with the state geologist and with the petitioners. The compensation to be paid the two members of the board of viewers, other than the engineer, shall not exceed four dollars per day for the time actually employed in the discharge of their duties, and in addition any actual and necessary expenses of travel and subsistence while in the actual discharge of their duties, an itemized report of which shall be submitted and verified.

1909, c. 442, s. 36; 1917, c. 152, ss. 1, 2.

5335. Account of expenses filed. The engineer and viewers shall keep an accurate account and report to the court the name and number of days each person was employed on the survey and the kind of work he was doing, and any expenses that may have been incurred in going to and from the work, and the cost of any supplies or material that may have been used in making the survey.

1909, c. 442, s. 13.

5336. Drainage record. The clerk of the superior court shall provide a suitable book, to be known as the "drainage record," in which he shall transcribe every petition, motion, order, report, judgment, or finding of the board in every drainage transaction that may come before it, in such a manner as to make a complete and continuous record of the case. Copies of all the maps and profiles are to be furnished by the engineer and marked by the clerk "official copies," which shall be kept on file by him in his office, and one other copy shall be pasted or otherwise attached to his record book.

1909, c. 442, s. 18.

See Griffin v. Comrs., 169-642.

ART. 6. DRAINAGE COMMISSIONERS

5337. Election and organization under original act. After the drainage district has been declared established, as aforesaid, and the survey and plan therefor approved, the court shall appoint three persons, who shall be designated as the board of drainage commissioners. Such drainage commissioners shall first be elected by the owners of land within the drainage or levee district, or by a majority of same, in such manner as the court shall prescribe. The court shall appoint those receiving a majority of the votes. If any one or more of such proposed commissioners shall not receive the vote of a majority of such land-

owners the court shall appoint all or the remainder from among those voted for in the election. Any vacancy thereafter occurring shall be filled in like manner. Such three drainage commissioners, when so appointed, shall be immediately created a body corporate under the name and style of "The Board of Drainage Commissioners of District," with the right to hold property and convey the same, to sue and be sued, and shall possess such other powers as usually pertain to corporations. They shall organize by electing from among their number a chairman and a vice-chairman. They shall also elect a secretary, either within or without their body. The treasurer of the county in which the proceeding was instituted shall be ex officio treasurer of such drainage commissioners. Such board of drainage commissioners shall adopt a seal, which they may alter at pleasure. The board of drainage commissioners shall have and possess such powers as are herein granted.

1909, c. 442, s. 19; 1917, c. 152, s. 17.

See *Griffin v. Comrs.*, 169-642.

Election of commissioners by landowners prior to appointment by clerk seems to be by way of recommendation: *Mann v. Gibbs*, 156-44. Election of commissioners for Mattamuskeet Lake District under this section and under act of 1909, c. 509: *Ibid*.

5338. Name of districts. The name of such drainage district shall constitute a part of its corporate name; for illustration, the board of drainage commissioners of Mecklenburg Drainage District, No. 1. In the naming of a drainage district the clerk of the court, notwithstanding the name given in the petition, shall so change the name as to make it conform to the county within which the district, or the main portion of the district, is located, and be also designated by number, the number to indicate the number of districts petitioned for in the county. For illustration, the first district organized in Mecklenburg County would be Mecklenburg County Drainage District, No. 1; name of the second would be Mecklenburg County Drainage District, No. 2; the fifth one organized would be Mecklenburg County Drainage District, No. 5: Provided, that so much of this section as provides for numbering the districts in each county shall not apply to districts in which bonds have been issued and sold prior to the fifth day of March, one thousand nine hundred and seventeen.

1909, c. 442, s. 19; 1917, c. 152, s. 17.

5339. Election and organization under amended act. 1. *Method of election.* In the election of drainage commissioners by the owners of land, each landowner shall be entitled to cast the number of votes equaling the number of acres of land owned by him and benefited, as appears by the final report of the viewers. Each landowner may vote for the names of three persons for commissioners. If any person or persons in any district shall own land in any district containing an area greater than one-half of the total area in the district, such owner shall only be permitted to elect two of the drainage commissioners, and a separate election shall be held under the direction of the clerk by the minority landowners, who shall elect one member of the drainage commissioners.

2. *Organization.* Immediately after the election of the board of drainage commissioners, and after the members of the board shall be appointed by the clerk, the clerk of the court shall notify each of them in writing to appear at a certain time and place within the county and organize. The clerk of the superior court

shall appoint one of the three members as chairman of the board of drainage commissioners, and in doing so he shall consider carefully and impartially the respective qualifications of each of the members for the position.

3. *Term of office.* The term of service of the members of the board of drainage commissioners so elected and appointed shall begin immediately after their organization. One commissioner shall serve for one year, one for two years, and the other for three years, the term to be computed from the first day of October following their organization. The members so serving for one, two, and three years, respectively, shall be designated by the clerk of the court or designated by lot among the members, in the discretion of the clerk. Thereafter each member shall be elected for three years. In the year when the term of any member or members shall expire the clerk of the court shall provide for an election of their successors to be held on the second Monday in August preceding the expiration of their term on the thirtieth day of September. The clerk of the court shall record in the drainage record the date of election, the members elected, and the beginning and expiration of their term of office.

4. *Vacancies filled.* If a vacancy shall occur in the office of any commissioner by death, resignation, or otherwise, the remaining two members are to discharge the necessary duties of the board until the vacancy shall be filled; and if the vacancy shall be in the office of chairman or secretary, the two remaining members may elect a secretary, and the clerk shall appoint one of the two remaining members to act as chairman to hold until the vacancy in the board shall be filled. The clerk shall keep a similar record of any election to fill vacancies, and the member or members shall be elected in like manner as the original members, and shall serve until the expiration of the term of his predecessor. The secretary of the board of drainage commissioners shall promptly notify the clerk of the superior court of any vacancy in the board.

5. *Failure to elect.* If for any reason the clerk of the court shall fail to provide for an election of drainage commissioners on the second Monday in August to succeed those whose terms will expire on the thirtieth day of September, the clerk shall have authority at the most convenient date thereafter to provide for such election, and in the meantime the incumbents shall continue to hold their office as commissioners until their successors are elected and qualified. The term of office of boards of drainage commissioners heretofore elected and appointed shall expire on the thirtieth day of September, nineteen hundred and seventeen, and their successors shall be elected on the second Monday in August, nineteen hundred and seventeen, in the manner provided by law.

6. *Meetings.* The board shall meet once each month at a stated time and place during the progress of drainage construction, and more often if necessary. After the drainage work is completed, or at any time, the chairman shall have the power to call special meetings of the board at a certain time and place. The chairman shall also call a meeting at any time upon the written request of the owner of a majority in area of the land in the district.

7. *Compensation.* The chairman of the board of drainage commissioners shall receive compensation based on an annual payment of fifty dollars per annum in districts containing less than five thousand acres in the aggregate, but the clerk of the superior court shall be authorized to increase this annual compensation

to one hundred dollars if the duties required of the chairman shall appear to justify such increase. In addition, the chairman shall receive his actual and necessary expenses of travel and subsistence, for which he shall file an itemized statement of the amounts actually paid. The remaining two members of the board shall receive a compensation of not exceeding five dollars per day while necessarily engaged in attendance upon meetings of the board, or in the discharge of other necessary duties imposed by the board, and, in addition, shall receive their actual and necessary expenses in attending meetings of the board. The secretary of the board, if other than a member of the board, shall receive such compensation for work actually performed as may be determined by the board. In drainage districts of unusually large area and requiring greater time and attention, the chairman of the board may be paid a greater compensation than one hundred dollars per annum, to be allowed by the clerk of the superior court, based on a petition filed by the board with the clerk, setting forth all the facts necessary for a determination of the matter. All such payments allowed to the chairman and members of the board shall be paid by vouchers upon the treasurer of the district issued in proper form.

8. *Application of section.* The provisions of subsection one of this section with respect to the right to vote for and the manner of election of commissioners shall not apply to districts organized prior to the fifth day of March, one thousand nine hundred and seventeen, but in those districts the landowners shall be entitled to vote as provided by the law prior to that date. The term of office of boards of drainage commissioners in districts organized prior to the date last mentioned, and in which no election of drainage commissioners has been held under this section, shall expire on the thirtieth day of September, nineteen hundred and nineteen, and their successors shall be elected on the second Monday in August, nineteen hundred and nineteen, in the manner provided by this section. If for any reason the clerk of the court shall fail to provide for such election he shall have authority at the most convenient date thereafter to provide for such election, and in the meantime the incumbents shall continue to hold office as commissioners until their successors are elected and qualified. The length of the term of service of commissioners elected hereunder shall be as provided in subsection three of this section. This section shall not apply to the manner or time of election of the drainage commission of the Mattamuskeet drainage district.

1917, c. 152, s. 5; 1919, cc. 109, 217.

ART. 7. CONSTRUCTION OF IMPROVEMENT

5340. Superintendent of construction. The board of drainage commissioners shall appoint a competent person as superintendent of construction. Such person shall furnish a bond, to be approved by the commissioners, in the penal sum of ten thousand dollars, conditioned upon the honest and faithful performance of his duties, such bond to be in favor of the board of drainage commissioners.

1909, c. 442, s. 20.

See *Griffin v. Comrs.*, 169-642.

5341. Letting contracts. The board of drainage commissioners shall cause notice to be given for two consecutive weeks in some newspaper published in the

county wherein such improvement is located, if such there be, and such additional publication elsewhere as they may deem expedient, of the time and place of letting the work of construction of such improvement, and in such notice they shall specify the approximate amount of work to be done and the time fixed for the completion thereof; and on the date appointed for the letting they, together with the superintendent of construction, shall convene and let to the lowest responsible bidder, either as a whole or in sections, as they may deem most advantageous for the district, the proposed work. No bid shall be entertained that exceeds the estimated cost, except for good and satisfactory reasons it shall be shown that the original estimate was erroneous. They shall have the right to reject all bids and advertise again the work, if in their judgment the interest of the district will be subserved by doing so. The successful bidder shall be required to enter into a contract with the board of drainage commissioners and to execute a bond for the faithful performance of such contract, with sufficient sureties, in favor of the board of drainage commissioners for the use and benefit of the levee or drainage district, in an amount equal to twenty-five per centum of the estimated cost of the work awarded to him. In canvassing bids and letting the contract, the superintendent of construction shall act only in an advisory capacity to the board of drainage commissioners. The contract shall be based on the plans and specifications submitted by the viewers in their final report as confirmed by the court, the original of which shall remain on file in the office of the clerk of the superior court and shall be open to the inspection of all prospective bidders. All bids shall be sealed and shall not be opened except under the authority of the board of drainage commissioners and on the day theretofore appointed for opening the bids. The drainage commissioners shall have power to correct errors and modify the details of the report of the engineer and viewers if, in their judgment, they can increase the efficiency of the drainage plan and afford better drainage to the lands in the district without increasing the estimated cost submitted by the engineer and viewers and confirmed by the court.

1909, c. 442, s. 21; 1911, c. 67, s. 4.

Section referred to: *Craven v. Comrs.*, 176-531; *Griffin v. Comrs.*, 169-642 (limited power to modify report).

5342. Monthly estimates for work, and payments thereon. The superintendent in charge of construction shall make monthly estimates of the amount of work done, and furnish one copy to the contractor and file the other with the secretary of the board of drainage commissioners; and the commissioners shall, within five days after the filing of such estimate, meet and direct the secretary to draw a warrant in favor of such contractor for ninety per centum of the work done, according to the specifications and contract; and upon the presentation of such warrant, properly signed by the chairman and secretary, to the treasurer of the drainage fund, he shall pay the amount due thereon. When the work is fully completed and accepted by the superintendent he shall make an estimate for the whole amount due, including the amounts withheld on the previous monthly estimates, which shall be paid from the drainage fund as before provided.

1909, c. 442, s. 22.

5343. Failure of contractor; reletting. If any contractor to whom such work has been let shall fail to perform the same according to the terms specified in his

contract, action may be had in behalf of the board of drainage commissioners against such contractor and his bond in the superior court for damages sustained by the levee or drainage district, and recovery made against such contractor and his sureties. In such an event the work shall be advertised and relet in the same manner as the original letting.

1909, c. 442, s. 23; 1911, c. 67, s. 5.

5344. Right to enter upon lands; removal of timber. In the construction of the work the contractor shall have the right to enter upon the lands necessary for this purpose and the right to remove private or public bridges or fences and to cross private lands in going to or from the work. In case the right of way of the improvement is through timber the owner thereof shall have the right to remove it, if he so desires, before the work of construction begins, and in case it is not removed by the landowner it shall become the property of the contractor and may be removed by him.

1909, c. 442, s. 24.

This section is not an invalid interference with claimant's right to his timber, the damages having been ascertained under section 5328: *Lumber Co. v. Drainage Comrs.*, 174-647. The drainage commissioners are liable as a board and as individuals for the wrongful diversion of water over the lands outside of district: *Leary v. Comrs.*, 172-25; s. c., 174-46.

5345. Drainage across public or private ways. Where any public ditch, drain, or water-course established under the provisions of this subchapter crosses a public highway, the actual cost of constructing the same across the highway or removing old bridges or building new ones shall be paid for from the fund of the drainage district. Wherever any highway within the levee or drainage district shall be beneficially affected by the construction of any improvement or improvements in such district it shall be the duty of the viewers appointed to classify the land to give in their report the amount of benefit to such highway, and notice shall be given by the clerk of the superior court to the clerk of the board of county commissioners in the county where the road is located of the amount of such assessment, and the county commissioners shall have the right to appear before the court and file its objections, the same as any landowner. When it shall become necessary for the drainage commissioners to repair any bridge or construct a new bridge across a highway by reason of enlarging any water-course, or of excavating any canal intersecting such highway, such bridge shall thereafter be maintained by and at the expense of the board of commissioners of such county, or by such other official board or authority as by law shall be required to maintain such highway so intersected.

Where any public canal established under the provisions of the general drainage law shall intersect any private road or cartway the actual cost of constructing a bridge across such canal at such intersection shall be paid for from the funds of the drainage district and constructed under the supervision of the board of drainage commissioners, but the bridge shall thereafter be maintained by and at the expense of the owners of the land exercising the use and control of the private road: Provided, if the private road shall be converted into a public

highway the maintenance of the bridge shall devolve upon the board of commissioners of the county or such other authority as by law shall be required to maintain public highways and bridges.

1909, c. 442, s. 25; 1911, c. 67, s. 6; 1917, c. 152, s. 6.

Assessments against county for benefits to highways, and payment enforced by mandamus:
Drainage Dist. v. Comrs., 174-738.

5346. Drainage across railroads; procedure. Whenever the engineer and the viewers in charge shall make a survey for the purpose of locating a public levee or drainage district or changing a natural water-course, and the same would cross the right of way of any railroad company, it shall be the duty of the owner in charge of the work to notify the railroad company, by serving written notice upon the agent of such company or its lessee or receiver, that they will meet the company at the place where the proposed ditch, drain, or water-course crosses the right of way of such company, the notice fixing the time of such meeting, which shall not be less than ten days after the service of the same, for the purpose of conferring with the railroad company with relation to the place where and the manner in which such improvement shall cross such right of way. When the time shall arrive fixed for such conference, unless for good cause more time is agreed upon, it shall be the duty of the viewers in charge and the railroad company to agree, if possible, upon the place where and the manner and method in which such improvement shall cross such right of way. If the viewers in charge and the railroad company cannot agree, or if the railroad company shall fail, neglect, or refuse to confer with the viewers, they shall determine the place and manner of crossing the right of way of the railroad company, and shall specify the number and size of openings required, and the damages, if any, to the railroad company, and so specify in their report. The fact that the railroad company is required by the construction of the improvement to build a new bridge or culvert or to enlarge or strengthen an old one shall not be considered as damages to the railroad company. The engineer and viewers shall also assess the benefits that will accrue to the right of way, roadbed, and other property of the company by affording better drainage or a better outlet for drainage, but no benefits shall be assessed because of the increase in business that may come to the road because of the construction of the improvement. The benefits shall be assessed as a fixed sum, determined solely by the physical benefit that its property will receive by the construction of the improvement, and it shall be reported by the viewers as a special assessment, due personally from the railroad company as a special assessment; it may be collected in the manner of an ordinary debt in any court having jurisdiction.

1909, c. 442, s. 26.

5347. Notice to railroad. The clerk of the superior court shall have notice served upon the railroad company of the time and place of the meeting to hear and determine the final report of the engineer and viewers, and the railroad company shall have the right to file objections to the report and to appeal from the findings of the board of commissioners in the same manner as any landowner. But such an appeal shall not delay or defeat the construction of the improvement.

1909, c. 442, s. 27.

5348. Manner of construction across railroad. 1. *Duty of railroad.* After the contract is let and the actual construction is commenced, if the work is being done with a floating dredge, the superintendent in charge of construction shall notify the railroad company of the probable time at which the contractor will be ready to enter upon the right of way of such railroad and construct the work thereon. It shall be the duty of the railroad to send a representative to view the ground with the superintendent of construction and arrange the exact time at which such work can be most conveniently done. At the time agreed upon the railroad company shall remove its rails, ties, stringers, and such other obstructions as may be necessary to permit the dredge to excavate the channel across its right of way. The work shall be so planned and conducted as to interfere in the least possible manner with the business of the railroad.

2. *Corporation commission to settle.* If the superintendent of construction and the railroad company shall not be able to agree as to the exact time at which such work can be done, including the time of beginning and the time to be consumed in such work, either party may give written notice thereof to the chairman of the corporation commission of the state, and thereupon the corporation commission shall cause an investigation to be made, and, after hearing both parties, shall fix the time of beginning such work and the time to be consumed in the work of construction, and the final determination of the corporation commission thereon shall be binding upon the superintendent of construction representing the district and the railroad company, and the work shall be done in such time as may be fixed by the corporation commission.

3. *Penalty for delay.* In case the railroad company refuses and fails to remove its track and allow the dredge to construct the work on its right of way, it shall be held as delaying the construction of the improvement, and such company shall be liable to a penalty of twenty-five dollars per day for each day of delay, to be collected by the board of drainage commissioners for the benefit of the drainage district as in the case of other penalties. Such a fine may be collected in any court having jurisdiction, and shall inure to the benefit of the drainage district.

4. *Payment of expense.* Within thirty days after the work is completed an itemized bill for the actual expenses incurred by the railroad company for opening its tracks shall be made and presented to the superintendent of construction of the drainage improvement. Such bill, however, shall not include the cost of putting in a new bridge or strengthening or enlarging an old one. The superintendent of construction shall audit this bill and, if found correct, approve the same and file it with the secretary of the board of drainage commissioners. The commissioners shall deduct from this bill the cost of the excavation done by the dredge on the right of way of the railroad company at the contract price, and pay the difference, if any, to the railroad company.

1909, c. 442, s. 28; 1911, c. 67, s. 7.

5349. Control and repairs by drainage commissioners. Whenever any improvement constructed under this subchapter is completed it shall be under the control and supervision of the board of drainage commissioners. It shall be the duty of the board to keep the levee, ditch, drain, or water-course in good repair, and for this purpose they may levy an assessment on the lands benefited by the con-

struction of such improvement in the same manner and in the same proportion as the original assessments were made, and the fund that is collected shall be used for repairing and maintaining the ditch, drain, or water-course in perfect order: Provided, however, that if any repairs are made necessary by the act or negligence of the owner of any land through which such improvement is constructed or by the act or negligence of his agent or employee, or if the same is caused by the cattle, hogs, or other stock of such owner, employee, or agent, then the cost thereof shall be assessed and levied against the lands of the owner alone, to be collected by proper suit instituted by the drainage commissioners. It shall be unlawful for any person to injure or damage or obstruct or build any bridge, fence, or floodgate in such a way as to injure or damage any levee, ditch, drain, or water-course constructed or improved under the provisions of this subchapter, and any person causing such injury shall be guilty of a misdemeanor, and upon conviction thereof may be fined in any sum not exceeding twice the damage or injury done or caused.

1909, c. 442, s. 29.

When the petition asked for a limitation of expense to 15 cents per acre, and this was omitted in the judgment on final report, and no exceptions were taken, it is *res judicata* and the commissioners are not restricted to such limit: *Gibbs v. Drainage Comrs.*, 175-5; *Mann v. Mann*, 176-353 (Mattamuskeet Lake District).

5350. Construction of lateral drains. The owner of any land that has been assessed for the cost of the construction of any ditch, drain, or water-course, as herein provided, shall have the right to use the ditch, drain, or water-course as an outlet for lateral drains from such land; and if the land be of such elevation that the owner cannot secure proper drainage through and over his own land, or if the land is separated from the ditch, drain, or water-course by the land of another or others, and the owner thereof shall be unable to agree with such others as to the terms and conditions on which he may enter their lands and construct the drain or ditch, he may file his ancillary petition in such pending proceeding to the court, and the procedure shall be as now provided by law.

1909, c. 442, s. 30; 1915, c. 43, s. 1; 1917, c. 152, s. 3.

ART. 8. ASSESSMENTS AND BOND ISSUE

5351. Total cost for three years ascertained. After the classification of lands and the ratio of assessments of the different classes to be made thereon has been confirmed by the court, the board of drainage commissioners shall ascertain the total cost of the improvement, including damages awarded to be paid to owners of land, all costs and incidental expenses, and also including an amount sufficient to pay the necessary expenses of maintaining the improvement for a period of three years after the completion of the work of construction, after deducting therefrom any special assessments made against any railroad or highway, and, thereupon, the board of drainage commissioners, under the hand of the chairman and secretary of the board, shall certify to the clerk of the superior court the total cost, ascertained as aforesaid; and the certificate shall be forthwith recorded in the drainage record and open to inspection of any landowner in the district.

1909, c. 442, s. 31; 1911, c. 67, s. 8.

5352. Assessment and payment; notice of bond issue. If the total cost of the improvement is less than an average of twenty-five cents per acre on all the land in the district, the board of drainage commissioners shall forthwith assess the lands in the district therefor, in accordance with their classification, and said assessment shall be collected in one installment, by the same officer and in the same manner as state and county taxes are collected, and payable at the same time. In case the total cost exceeds an average of twenty-five cents per acre on all lands in the district, the board of drainage commissioners shall give notice for three weeks by publication in some newspaper published in a county in which the district, or some part thereof, is situated, if there be any such newspaper, and also by posting a written or printed notice at the door of the courthouse and at five conspicuous places in the district, reciting that they propose to issue bonds for the payment of the total cost of the improvement, giving the amount of bonds to be issued, the rate of interest that they are to bear, and the time when payable. Any landowner in the district not wanting to pay interest on the bonds may, within fifteen days after the publication of such notice, pay to the county treasurer the full amount for which his land is liable, to be ascertained from the classification sheet and the certificate of the board showing the total cost of the improvement, and have his lands released from liability to be assessed for the improvement; but such land shall continue liable for any future assessment for maintenance or for any increased assessment authorized under the law.

1909, c. 442, s. 32; 1911, c. 67, s. 9.

Mandamus will issue to compel the drainage commissioners to levy an assessment to pay expense of establishing the district: *Allen v. Drainage Comrs.*, 175-190. An injunction by independent action will not lie to prevent the collection of assessments; the remedy is by motion in the cause: *Banks v. Lane*, 170-14; s. c., 171-505; *Taylor v. Comrs.*, 176-217. Injunction will not issue to restrain collection of assessments upon an allegation that the drainage commissioners are not properly carrying out the drainage plan: *Griffin v. Comrs.*, 169-642.

Assessments are not in the nature of a contract for work done in construction, but are charges based upon the estimated cost of work, the value of the land, and the benefits probably to be received: *Craven v. Comrs.*, 176-531. An assessment is not a personal debt, but a charge upon the land, to be paid as the assessments mature: *Drainage District v. Huffstetler*, 173-523; *Taylor v. Comrs.*, 176-217; but see section 5362. Assessments are not to be levied on timber interests: *Lumber Co. v. Comrs.*, 173-117.

The assessments are to be collected as taxes and paid over to the county treasurer or to the person performing the duties of treasurer: *Comrs. v. Lewis*, 174-528.

An assessment for bond issue in a drainage district has priority over a mortgage on the land: *Drainage Comrs. v. Farm Assn.*, 165-697.

For collection of assessments under special district act, see *Drainage Comrs. v. Mitchell*, 170-324. Section referred to in *Comrs. v. Engineering Co.*, 165-37. For liability of individual landowners in Mattamuskeet Lake District, see *Carter v. Comrs.*, 156-183; *Caravan v. Comrs.*, 161-100.

5353. Failure to pay deemed consent to bond issue. Every person owning land in the district who shall fail to pay to the county treasurer the full amount for which his land is liable, as aforesaid, within the time above specified, shall be deemed as consenting to the issuance of drainage bonds, and in consideration of the right to pay his proportion in installments, he hereby waives his right of defense to the payment of any assessments which may be levied for the payment of bonds, because of any irregularity, illegality, or defect in the proceedings

prior to this time, except in case of an appeal, as hereinbefore provided, which is not affected by this waiver. The term "person" as used in this act includes any firm, company, or corporation.

1909, c. 442, s. 33; 1911, c. 67, s. 10.

Section referred to: Comrs. v. Lewis, 174-528; Comrs. v. Engineering Co., 165-37.

5354. Bonds issued. At the expiration of fifteen days after publication of notice of bond issue the board of drainage commissioners may issue bonds of the drainage district for an amount equal to the total cost of the improvement, less such amounts as shall have been paid in in cash to the county treasurer, plus an amount sufficient to pay interest on the bond issue for the three years next following the date of issue. It shall be optional with the board of drainage commissioners in the issuing of bonds to issue serial bonds in denominations of not less than one hundred dollars nor more than one thousand dollars, bearing not more than six per cent interest from date of issue, payable semiannually. The first annual installment of principal shall fall due not less than three years nor more than six years after the date thereof, and each annual installment of principal shall not be less than five per cent nor more than ten per cent of the total bonds authorized and issued. If the first annual installment of principal shall be made to fall due more than three years after the date of issue, the annual assessments shall be levied and collected to meet the semiannual installments of interest due for such years as the fund therefor may not have been otherwise provided.

1909, c. 442, s. 34; 1911, c. 67, s. 11; 1917, c. 152, s. 12.

Section referred to in Comrs. v. Lewis, 174-528. For questions involving the issue of bonds for Mattamuskeet Lake District, see Mann v. Mann, 176-353; Gibbs v. Drainage Comrs., 175-5; Carter v. Comrs., 156-183. The exemption of drainage district bonds from taxation is unconstitutional: Comrs. v. Webb, 160-594.

5355. Form of bonds; excess assessment. All bonds authorized and issued shall be signed by the chairman and secretary of the board of drainage commissioners and the corporate seal of the district affixed thereto, and the interest coupons shall be authenticated by the facsimile signature of the secretary, and both the principal and interest coupons shall be payable at some bank or trust company to be designated by the board of drainage commissioners and incorporated in the body of the bond. The form of the bond shall be authorized by the board of drainage commissioners or by the board and the purchaser of the bonds jointly, at the option of the board.

For the purpose of meeting any possible deficit in the collection of annual drainage assessments there shall be levied and assessed during each year, when either principal or interest on bonds shall be due, such an assessment as will yield five per cent more than the total of principal and interest due in such year; that is to say, for every one hundred dollars of principal and interest, or either, due in any one year, there shall be levied and assessed a sufficient drainage tax to yield one hundred and five dollars for such year. When this excess of drainage tax so levied and collected shall accumulate so that the aggregate surplus in the hands of the treasurer shall amount to more than ten per cent of the total bonds of the district outstanding and unpaid, then such surplus above ten per cent thereof may be available for expenditure by the board of drainage commissioners in the maintenance and upkeep of the drainage works in such district: Provided,

this section shall not apply to drainage districts established and in which the bonds have been sold prior to the fifth day of March, one thousand nine hundred and seventeen.

1917, c. 152, s. 13.

5356. Application of funds; holder's remedy. The commissioners may sell these bonds at not less than par and devote the proceeds to the payment for the work as it progresses and to the payment of the interest on the bonds for the three years next following the date of issue and to the payment of the other expenses of the district provided for in this subchapter. The proceeds from such bonds shall be for the exclusive use of the levee or drainage district specified on their face, and shall be numbered by the board of drainage commissioners and recorded in the drainage record, which record shall set out specifically the lands embraced in the district on which the tax has not been paid in full, which land is to be assessed as hereafter provided. If any installment of principal or interest represented by the bonds shall not be paid at the time and in the manner when the same shall become due and payable, and such default shall continue for a period of six months, the holders of such bonds upon which default has been made may have a right of action against the drainage district or the board of drainage commissioners of the district, wherein the court may issue a writ of mandamus against the drainage district, its officers, including the tax collector and treasurer, directing the levying of a tax or special assessment as herein provided, and the collection of same, in such sum as may be necessary to meet any unpaid installments of principal and interest and cost of action; and such other remedies are hereby vested in the holders of such bonds in default as may be authorized by law; and the right of action is hereby vested in the holders of such bonds upon which default has been made authorizing them to institute suit against any officer on his official bond for failure to perform any duty imposed by the provisions of this subchapter. The official bonds of the tax collector and county treasurer shall be liable for the faithful performance of the duties herein assigned them. Such bonds may be increased by the board of county commissioners.

1909, c. 442, s. 34; 1911, c. 67, s. 11; 1911, c. 205.

Section cited in *Comrs. v. Lewis*, 174-528.

5357. Sale of bonds. In making the sale of drainage bonds the board of drainage commissioners shall prepare a notice of such sale containing the usual and appropriate information regarding the terms and provisions of the bonds, and shall publish the same for at least a period of two weeks in at least one paper of general circulation published within the state and in at least one other newspaper of large circulation among the buyers of bonds, in which they shall invite sealed bids from prospective purchasers to be opened on a certain day, and may require a cash deposit to accompany all bids, and shall reserve the right to reject any and all bids. In such notice the commissioners may hold in reserve information as to the date when the first installment of principal shall fall due, the annual installments of principal to be paid, the number of years within which the serial bonds are to be paid, the form of the bonds, and the name of the bank or trust company at which the interest coupons and the installments of principal are to be made payable, and shall state that the information and data so withheld may subsequently be agreed upon between the drainage commissioners and the pur-

chaser of the bonds; or the board of drainage commissioners in their advertisement asking bids may make optional propositions in the respects above recited, inviting bids as to each kind of bond so proposed. The board of drainage commissioners shall accept the highest bona fide bid for such bonds and issue and sell the same accordingly, provided the highest bid shall equal or exceed the par value of the bonds with any accrued interest thereon. If no satisfactory bid shall be received, the board of drainage commissioners may readvertise the bonds for sale in the manner above provided, or they may accept any private bid for the bonds at not less than their par value, with any accrued interest thereon. The board of drainage commissioners shall in good faith make diligent effort to sell the bonds at a price not less than their par value, with accrued interest.

1909, c. 442, s. 34; 1911, c. 67, s. 11; 1917, c. 152, s. 15.

5358. Refunding bonds issued. In any case where the board of drainage commissioners of any drainage district have issued or may issue bonds for the purpose of constructing or completing the drainage works in such district, the payment of which at maturity would in the judgment of the board of drainage commissioners be an unreasonable burden on the owners of the lands in such district assessed for the payment of such bonds and interest, or if it shall appear for other good and substantial reasons that the welfare of the district and the owners of lands therein would be promoted thereby, the board of drainage commissioners shall have the power to refund such bonds, or any part thereof, and issue new bonds equal to the amount of bonds outstanding and unpaid, or any part thereof. The new or refunding bonds shall bear a rate of interest not exceeding six per cent, payable semiannually, and shall be divided into such annual installments not exceeding ten per cent and not less than five per cent of the outstanding bonds so refunded. The new assessments shall be levied and collected with which to pay the principal and interest on the bonds in the manner provided by law. The first installment of principal on the bonds so refunded may be made payable at a certain date in the future not exceeding six years from the date of the refunding bonds, and in the meantime annual assessments shall be levied and collected for the payment of the interest.

1917, c. 152, s. 14.

5359. Drainage bonds received as deposits. The state treasurer is authorized to receive drainage bonds issued by drainage districts in North Carolina as deposits from banks, insurance companies, and other corporations required by law to make deposits with the state treasurer: Provided, that the attorney-general shall have approved the form of such bonds.

1917, c. 152, s. 7.

5630. Assessment rolls prepared. The board of drainage commissioners shall immediately prepare the assessment rolls, or drainage tax lists, giving thereon the names of the owners of land in the district, so far as can be ascertained from the public records, a brief description of the several tracts of land assessed, and the amount of the assessment against each tract of land. The first of these assessment rolls shall provide assessments sufficient for the payment of interest on the bond issue to accrue the third year after their issue and the installment of principal to fall due at the expiration of the third year after the date of issue, together

with such amounts as shall have to be paid for collection and handling of the same. The second assessment roll shall make like provision for the fourth year; the third for the fifth year; the fourth for the sixth year; the fifth for the seventh year; the sixth for the eighth year; the seventh for the ninth year; the eighth for the tenth year; the ninth for the eleventh year; the tenth for the twelfth year. Each of the assessment rolls shall specify the time when collectible and be numbered in their order, and the amounts assessed against the several tracts of land shall be in accordance with the benefits received, as shown by the classification and ratio of assessments made by the viewers. These assessment rolls shall be signed by the chairman of the board of drainage commissioners and by the secretary of the board. There shall be four copies of each of the assessment rolls, one of which shall be filed with the drainage record, one shall be filed with the chairman of the board of drainage commissioners, who shall carefully preserve the same, one shall be preserved by the clerk of the court, without change or mutilation, for the purposes of reference or comparison, and one shall be delivered to the sheriff, or other county tax collector, after the clerk of the superior court has appended thereto an order directing the collection of such assessments, and the assessments shall thereupon have the force and effect of a judgment as in the case of state and county taxes. If the drainage commission who has assessed the lands of a drainage district prior to March 11th, 1919, shall file the aforesaid four copies of assessment rolls within six months from April 1st, 1919, the filing of such assessment rolls shall have the same legal effect as if filed strictly in accordance with this section immediately after the preparation of such assessment rolls.

1911, c. 67, s. 12; 1917, c. 152, s. 9; 1919, c. 282, s. 1.

See *Griffin v. Comrs.*, 169-642.

5361. Assessment lien; collection; sale of land. The assessments shall constitute a first and paramount lien, second only to state and county taxes, upon the lands assessed for the payment of the bonds and interest thereon as they become due, and shall be collected in the same manner and by the same officers as the state and county taxes are collected. The assessments shall be due and payable on the first Monday in September each year, and if the same shall not be paid in full by the thirty-first day of December following, it shall be the duty of the sheriff or tax collector to sell the lands so delinquent. The sale of lands for failure to pay such assessments shall be made at the courthouse door of the county in which the lands are situated, between the hours of ten o'clock in the forenoon and four o'clock in the afternoon of the first Monday in February of each year; and if for any necessary cause the sale cannot be made on that date, the sale may be continued from day to day for not exceeding four days, or the lands may be readvertised and sold on the first Monday in March succeeding during the same hours without any order therefor. The existing general tax law in force when sales are made for delinquent assessments shall have application in redeeming lands so sold, and in all other respects, except as to the time of sale of lands, the existing law as to the collection of state and county taxes shall apply to the collection of such drainage assessments.

1911, c. 67, s. 12; 1917, c. 152, s. 9.

Assessments for bond issue have priority over mortgage on the land: Drainage Comrs. v. Farm Assn., 165-697. While the assessments are liens, they become effective as such as they accrue: Taylor v. Comrs., 176-217. For rights of purchaser, see section 5371.

Sales of land for assessments are governed by the same rules as sales for taxes: Townsend v. Drainage Comrs., 174-556. The money collected should be paid over to the county treasurer or to the person performing the duties of such office: Comrs. v. Lewis, 174-528.

5362. Assessment collectible out of other property of delinquent. If for any cause the sheriff is unable to collect the amount of assessment made by the drainage commissioners out of the lands assessed under the provisions of this article, then the said assessment shall be collectible as taxes are collected out of any other property, real or personal, belonging to the person owning the land at the time such assessment was made.

1919, c. 282, s. 2.

5363. Sheriff in good faith selling property for assessment not liable for irregularity. The sheriff who executes upon property for the collection of drainage assessments under the provisions of this article shall not be liable either civilly or criminally if he shall sell such property in good faith, even though such sale is irregular or for any cause illegal.

1919, c. 282, s. 4.

5364. Receipt books prepared. The clerk of the superior court in each county where one or more drainage districts have been established shall be required to have prepared annually during the month of August a form of receipt, with appropriate stubs attached and properly bound, for the drainage assessments due on each tract of land as recited in the assessment rolls. This bound book of tax receipts or bills shall be indorsed "Drainage assessments of the (here give the name of the district) for the county of _____, delivered to the sheriff or tax collector as of the first Monday in September, 19____, for collection as required by law," and the same indorsement shall be printed at the top of each tax bill or blank receipt. Each tax bill or blank receipt shall contain a blank space for the name of the owner of the property, the amount of the annual drainage tax, the amount of maintenance tax, if any, and a receipt at the bottom of the same, followed by a blank line for the signature of the tax collector. This bound book of tax bills or receipts, with the blanks duly filled in, shall be delivered to the sheriff or tax collector on the first Monday of September of each year. The necessary cost of printing and binding such book of tax bills or receipts and the filling in of the same shall be a proper charge against such drainage district and shall be paid by the board of drainage commissioners.

1917, c. 152, s. 9; 1919, c. 208, s. 2.

5365. Receipt books where lands in two or more counties. Where any drainage district which has been established contains lands located in a county or counties other than the county in which the district was established, the clerk of the superior court of the county in which the district was established shall have prepared annually during the month of August a form of tax bills or receipts, with appropriate stubs attached, covering all the lands in the drainage district located in such other county or counties, and in the form herein provided for the county in which the district has been established, and have the same substantially bound in book form. He shall also fill in the blanks of such tax receipts ready

for the signature of the collector. On a page in such bound book after the tax bills or receipts there shall be appended an order directed to the sheriff or tax collector in the county in which such lands are located, which shall be in substantially the following form:

STATE OF NORTH CAROLINA—COUNTY OF

The Sheriff or Tax Collector of.....County:

This is to certify that the foregoing tax bills or blank receipts embrace the drainage assessments made on certain lands in the county of....., which are located in and are a part of (here insert the name of the drainage district), which district was established in the county of..... These assessments are due on the first Monday of September, 19..., and must be paid and collected within the time required by law. You will make monthly settlements of your collections with the treasurer of.....county, being the county in which the district was established, and in all other respects you will discharge your duties as sheriff or tax collector as required by law.

In witness whereof, I have hereunto set my hand and official seal, this.....day of....., 19...

.....,
Clerk Superior Court.....County.

Thereupon such drainage assessments in such county shall have the force and effect of a judgment upon the lands so assessed, as in the case of state and county taxes, and shall in all other respects be as valid assessments as those levied upon lands in the county in which the district was established. The auditor for drainage districts herein authorized shall also examine the records and accounts of the sheriff of such county. In the establishment and administration of the drainage districts the clerk of the superior court, the county treasurer, and the chairman of the board of drainage commissioners shall have jurisdiction over the lands and the collection of drainage assessments in the county or counties other than the county in which the district was established to the same extent as in the county where such district was established: Provided, that in those counties which do not have a county treasurer, then the auditor provided for in this subchapter shall perform the duties required by this section for the county treasurer.

1917, c. 152, s. 11.

5366. Authority to collect arrears. If any sheriff or tax collector was authorized to collect drainage assessments in any year prior to 1917, and failed to collect any part of such drainage assessments, and is now out of office, or is still holding the office of sheriff or tax collector, then and in such event such sheriff or tax collector, regardless of the expiration of his term of office, is hereby authorized and directed to proceed to the collection of such unpaid drainage assessments, and in default of payment being made, he is further authorized to make sales of such lands as may be in default at the times and in the manner authorized by law during the year one thousand nine hundred and seventeen, one thousand nine hundred and eighteen, or one thousand nine hundred and nineteen.

1917, c. 152, s. 9.

5367. Sheriff to make monthly settlements; penalty. The sheriff or tax collector shall be required to make settlements with the county treasurer on the first day of each month of all collections of drainage assessments for the preceding month, and to pay over to the treasurer the money so collected, for which the treasurer shall execute an appropriate receipt, to the end that the treasurer may

have funds in hand to meet the payments of interest and principal due upon the outstanding bonds as they mature. If any sheriff or tax collector shall fail to comply with the law for the collection of drainage assessments, or in making payments thereof to the treasurer as provided by law, he shall be guilty of a misdemeanor and, upon conviction, shall be subject to fine and imprisonment, in the discretion of the court, and he shall likewise be liable in a civil action for all damages which may accrue either to the board of drainage commissioners or to the holder of the bonds, to either or both of whom a right of action is given.

1911, c. 67, s. 12; 1917, c. 152, s. 9.

Section referred to in *Comrs. v. Lewis*, 174-528.

5368. Duty of treasurer to make payment; penalty. It shall be the duty of the county treasurer, and without any previous order from the board of drainage commissioners, to provide and pay the installments of interest at the time and place as evidenced by the coupons attached to the bonds, and also to pay the annual installments of the principal due on the bonds at the time and place as evidenced by the bonds. The county treasurer shall be guilty of a misdemeanor and subject, upon conviction, to fine and imprisonment, in the discretion of the court, if he shall wilfully fail to make prompt payments of the interest and principal of the bonds, and he shall likewise be liable in a civil action for all damages which may accrue either to the board of drainage commissioners or to the holder of such bonds, to either or both of whom a right of action is hereby given.

1911, c. 67, s. 12.

Section referred to in *Comrs. v. Lewis*, 174-528.

5369. Fees for collection. The fee allowed the sheriff or tax collector for collecting the drainage tax as hereinbefore prescribed shall be two per cent of the amount collected, and the fee allowed the treasurer for disbursing the revenue obtained from the sale of drainage bonds shall be one per cent of the amount disbursed: Provided, that no fee shall be allowed the sheriff or tax collector or county treasurer for collecting or receiving the revenue obtained from the sale of the bonds hereinbefore provided for, nor for disbursing the revenue raised for paying off such bonds: Provided further, that in those counties where the sheriff or tax collector and treasurer are on a salary basis, no fees whatever shall be allowed for collecting or disbursing the funds of the drainage district.

1911, c. 67, s. 13.

Section referred to in *Comrs. v. Lewis*, 174-528.

5370. Conveyance of land; change in assessment roll; procedure. 1. *Status of land fixed.* The boundaries of lands as surveyed and mapped, the ownership thereof, and the classification and assessment thereof as appears in the final report and map and upon the assessment roll, shall be and remain as of the time when the district was established and the final report of the board of viewers was approved by the court. No conveyance or devise of land or devolution by inheritance after the petition has been filed or the owner thereof has been served with the original summons, either by personal service or by publication, shall affect the status or liability of such land as a part of such drainage district, except as herein provided.

2. *Conveyance before final report.* If the owner of any lands included in such district shall, after the filing of the petition, and after being served with the original summons and before the approval of the final report, convey the whole or any part of such lands, or the title thereto shall be otherwise changed, then and in such event the grantor and grantee or new owner, or either, may file a petition in an ancillary proceeding before the clerk of the superior court setting forth the facts, with a description of the lands conveyed either in part or the entire body of land, together with a description of the land excepted and not conveyed. If the grantor or grantee or new owner, in whole or in part, file such petition, the other not so joining shall be served with notice of same. The clerk may require the petitioner to attach to the petition a map showing the boundaries of the entire body of land as it appears in the record of the proceedings, and also showing the part conveyed. If the ownership of such land has been changed by devise or inheritance, or any joint ownership has been changed by partition, such new owner may file a petition as herein provided. Such petition shall conclude with a prayer that the grantee or new owner be made a party to the proceeding. The court after a hearing may make the grantee or new owner a party to the drainage proceeding and shall certify to the engineer and viewers a description of the land so conveyed or held by the new owner, with directions to verify the boundaries and to classify the land to the same extent as if the grantee was the original party. Any part of such lands not so conveyed shall be and remain a part of the district.

3. *Conveyance after district established.* After the district shall be established, the lands classified, the final report approved, and the assessment roll filed, no conveyance of any land in the district shall affect or change the existing status or liability of such land as to assessment charges or otherwise, except in the manner herein defined. When the title and ownership of any tract of land embraced in the district have been changed or vested in others by grant, devise, or inheritance, or by partition between joint owners, subsequent to the establishment of the district, the assessment roll may be amended in the following manner: The grantor and grantee, or the new owners, may file a petition with the chairman of the board of drainage commissioners alleging that the ownership of the land has changed, and the manner thereof, in whole or in part. If the whole body of land as appears in the final report or on the assessment roll has changed ownership, a general description consistent with such final report and map shall be sufficient. If the ownership of the body of land has changed only as to part thereof, the petition shall contain a description of the part thereof claimed by the new owners, and the number of acres and the classifications, or the several classes if it be in more than one class, and also a description of that part of the land the title to which remains in the original owner, with the number of acres and with the classification and the several classes if it contains more than one class of land. The petition shall so describe the land and the number of acres in each class as to that part of which the ownership has changed as to maintain the number of acres originally assessed, and the class or classes in which the same has been assessed, and the chairman of the board of drainage commissioners may require the petitioners to have the lands surveyed, and submit a map if the same shall be necessary.

4. *Duty of chairman of drainage commissioners and clerk.* The chairman of the board of drainage commissioners shall present this petition to the clerk of the superior court at any time thereafter, not later than the first Monday in July following. It shall be the duty of the clerk to examine and verify the facts set forth in the petition, and particularly if the number of acres assessed and the classes thereof against the new owners added to the number of acres and the classes assessed against that part of the land, the title to which has not changed, shall equal the total number of acres and the classes so assessed as appear against such entire body of land in the final report and assessment roll. If the clerk shall be so satisfied, he shall enter an order or decree changing the original assessment roll, or the assessment roll as theretofore amended, by adding the name of the new owner with the number of acres assessed in each class, and by amending the number of acres assessed and the classes thereof against the original owner as appears on the original assessment roll or assessment roll as theretofore amended. It shall be the duty of the clerk after such order to make such changes in the assessment roll. It shall be the duty of the clerk of the superior court in making changes in the original assessment roll from time to time to observe and maintain the total number of acres in each class, to the end that the revenue produced from the annual assessment shall not be thereby diminished. The chairman of the board of drainage commissioners, instead of presenting to the clerk of the court each petition of landowners separately, may combine a number of petitions and present the same to the court at one and the same time. The first Monday in July in each year is hereby set apart as a special day on which petitions for changing the assessment roll may be submitted, at which time the clerk shall hear all petitions not theretofore submitted.

5. *Failure of chairman of board to act.* If the chairman of the board of drainage commissioners shall fail to act when any petition shall be submitted to him as herein provided, or the chairman or any member of the board shall fail to discharge any duty imposed by this section or any other provision of the general drainage law, it is hereby made the duty of the clerk of the superior court, either independently or upon the request of any landowner in the district, to cite such chairman or member to appear before him upon a certain day and show cause why he should not be removed from office, and unless good cause be shown, it shall be the duty of the clerk to remove the chairman or any member of the board of drainage commissioners and to certify his action, to the end that another member may be elected according to law. If the failure of the chairman or any member of the board of drainage commissioners to discharge such duty shall be wilful, he shall be guilty of a misdemeanor, and upon conviction shall be punished by fine or imprisonment, or both, in the discretion of the court.

6. *When owner may file petition with clerk.* If the grantor and grantee, or all those claiming to have acquired title to any body of land on the assessment roll and whose assessment will be affected, cannot agree upon joinder in a petition to the chairman of the board of drainage commissioners, or if the said chairman fails within a reasonable time to discharge his duty by presenting the petition to the court, then either party interested in the tract of land as it appears on the assessment roll may file a petition with the clerk of the superior court setting forth the facts as to the change in ownership and title of such land, with the description of the entire tract of land and the number of acres in each class,

together with a description of that part of the land as to which the ownership has changed, with the number of acres in each class, and pray the court to order that the assessment roll be amended in accordance with the title and interest of the several owners. At the time of filing the petition a summons shall issue to the other parties interested in the tract of land to show cause, on a day certain, why the prayer of the petition should not be granted. Upon the return day the clerk of the court shall hear all the evidence, find the facts, and enter up a judgment directing the appropriate amendment to the assessment roll. It shall be the duty of the clerk to amend the assessment roll in accordance with his judgment.

7. *Effect of change in assessment roll.* No judgment or amendment of the assessment roll shall be valid unless the number of acres and the classes assessed against the original and new owners shall equal the area and classification as contained in the tract of land as it appears on the original assessment roll. This petition may be presented to the court at any time, but the first Monday in July in each year is hereby designated as the day upon which all petitions for amendments to the assessment roll may be submitted. Any amendments to the assessment roll ordered after the last day of August in each year shall not become effective until the first day of September the following year, and the assessment roll as it appears on the first day of September of each year shall constitute the assessment roll to be delivered to the sheriff on the first Monday in September, and he shall collect the drainage assessments as they appear thereon without regard to any changes in title or ownership or any changes in the assessment roll made by the court after the thirty-first day of August. All amendments sought to be made to the assessment roll shall have reference to the assessment roll as it appears at the time the amendment is sought, which shall be either the original assessment roll or as amended; but it shall be the duty of the clerk of the superior court to examine frequently the assessment roll as amended, and before the same shall be further amended, and make certain that the aggregate number of acres in each class as appeared on the original assessment roll shall not be reduced, nor the aggregate annual assessments reduced. Any amendments ordered shall be made on the assessment roll and become due in the following September, and on all subsequent assessment rolls which have not become due or collectible.

8. *Clerk to prepare new assessment rolls.* It shall be the duty of the chairman and the secretary of the board of drainage commissioners of the district to render to the clerk of the court any clerical assistance involved in changes in the assessment rolls, but the primary duty and responsibility in making such amendments shall remain with the clerk of the superior court, and he shall be held liable for any error or omission which may work a loss to the district or the bondholders. If such amendments to the assessment rolls shall make necessary the preparation of new assessment rolls, the clerk of the superior court shall be required to prepare such new assessment rolls with the clerical assistance of the chairman and secretary of the board of drainage commissioners, and such new assessment rolls shall be signed by the chairman and secretary of the board of drainage commissioners and by the clerk of the superior court before delivery to the sheriff or

tax collector as required upon the original assessment rolls. The original assessment rolls shall be preserved by the clerk of the court among his records for future reference.

9. *Number of copies.* In the event it shall be necessary to prepare new assessment rolls, the clerk shall prepare four copies, one copy for the drainage record, another for the sheriff or tax collector, another for the chairman of the board of drainage commissioners, and the other for filing and preserving among the records, and which fourth copy shall never be mutilated or interlined, but shall be preserved in its original form for reference. As to all drainage districts heretofore established, the clerk of the court shall prepare an additional copy of all the original assessment rolls for the several years the lands in such districts are assessed and securely preserve the same, at least until all outstanding bonds of the district shall be paid, to the end that they may always be accessible for reference and comparison. It shall not be necessary hereafter to deliver to the sheriff or tax collector a copy of the assessment roll for the current year in which assessments are due and payable, but the copy provided for him may remain among the records of the clerk of the court for safe keeping and reference by him.

10. *Costs determined.* As compensation to the clerk of the court for the performance of duties imposed herein, he shall be paid such sum by the board of drainage commissioners of such drainage district as they may deem fair and adequate, and the same is hereby declared a proper charge against said district, but no additional compensation shall be paid to the clerk in those counties where he receives a salary in lieu of fees. Any costs which may accrue in amendments to the assessment rolls shall be adjudged against the parties in interest, in the discretion of the clerk, and such costs shall be paid before the amendment shall become effective. As to all petitions which shall be filed and submitted to the court on the first Monday in July, no costs shall be paid or adjudged against any party in those counties where the clerk and sheriff receive a salary in lieu of fees.

11. *Chairman represents board.* As to all petitions filed with the chairman of the board of drainage commissioners, or as to the discharge of any duty by the chairman required of him under the general drainage law, he shall be presumed to act for the board, and the chairman shall do all things necessary to protect and maintain the interests of the drainage district. If the chairman shall be or become a landowner in the drainage district and may desire an amendment to the assessment rolls, he may file his petition before any other member of the board, or file the same directly with the clerk of the superior court.

12. *Application of section.* The provisions of this section shall apply to landowners in districts heretofore established and to drainage proceedings heretofore instituted to the same extent as to drainage proceedings hereafter instituted and established.

1917, c. 152, s. 4; 1919, c. 208, s. 1.

NOTE.—For the adjustment of assessments in the case of tenant for life or years and remainderman, see Municipal Corporations, art. 9; 1911, c. 7.

5371. Warranty in deed runs to purchaser who pays assessment. Where the land assessed by drainage commissioners under the provisions of this article has been purchased since the making of the assessment by a purchaser for value without notice under a deed of general warranty, and said purchaser pays to

the sheriff the amount of said drainage assessment, which is a lien on the land purchased, then such purchaser who pays the said drainage assessment shall have a right of action against the warrantor of his title under the covenant of general warranty contained in his deed for the recovery of the amount paid.

1919, c. 282, s. 3.

5372. Modification of assessments. 1. *Relevy.* Where the court has confirmed an assessment for the construction of any public levee, ditch, or drain, and such assessment has been modified by the court of superior jurisdiction, but for some unforeseen cause it cannot be collected, the board of drainage commissioners shall have power to change or modify the assessment as originally confirmed to conform to the judgment of the superior court and to cover any deficit that may have been caused by the order of court or unforeseen occurrence. The relevy shall be made for the additional sum required, in the same ratio on the lands benefited as the original assessment was made.

2. *Upon sale of land for assessments.* If any person, or any number of persons, claiming to have title to any tract or tracts of land subject to assessment or drainage tax shall fail to pay any annual assessment levied against such lands, and the sheriff or tax collector shall be compelled to sell such lands under the law for the purpose of making such collection, the net proceeds of such sale shall be paid to the county treasurer, to be held by him and disbursed for the purpose of paying the current assessment and future annual assessments so far as the proceeds may be sufficient. When the fund in the custody of the treasurer shall be exhausted in the payment of annual assessments against such lands, or there shall not be a sufficient sum to pay the next annual assessment, the county treasurer shall immediately give written notice to that effect to the chairman of the board of drainage commissioners of the district, and also to the clerk of the superior court, whereupon the board of drainage commissioners shall institute an investigation of such tract or tracts of land to determine the market value, and if they shall find that the market value is not equal to all the future annual assessments to cover its share of installments of principal and interest on the outstanding bonds, they shall proceed, with the approval of the clerk of the superior court, to make new reassessment rolls on all the remaining lands in the district and increase the sum in sufficient sums to equal the deficit thereby created, and such new assessment rolls shall constitute the future assessment rolls until changed according to law, and shall be certified to the tax collector as herein provided in lieu of the former assessment rolls. However, the tract or tracts of land which have been so sold by the tax collector shall continue on the assessment roll in the name of the new owner, but reassessed upon the new basis, and the drainage tax collected at the same time and in the same manner as other lands as long as such lands may have sufficient market value out of which to collect the annual drainage tax, and when such lands shall cease to have such value, or shall be abandoned by the person claiming title thereto, the drainage commissioners may omit the same from the assessment roll with the approval of the clerk of the superior court, but such lands may in the same manner at any time in the future be restored to the assessment rolls.

3. *Surplus funds.* If the funds in the hands of the county treasurer at any time, arising under this section or in any other manner, shall be greater than is

necessary to pay the annual installments of principal and interest, or the annual cost of maintenance of the drainage works, or both, such surplus shall be held by the county treasurer for future disbursement for other purposes as herein provided or subject to the order of the board of drainage commissioners.

4. *Insufficient funds.* If there shall be any impairment or destruction of the drainage works by any unforeseen cause or occurrence not anticipated, during the period of construction by the contractor, the contractor shall nevertheless repair and complete the works according to the contract and specifications and shall be liable therefor and also his sureties on his bond; but if the contractor shall make default and if there shall be a failure to collect all resulting damages from such contractor and the sureties upon his bond, and it shall thereby be necessary to raise a greater sum of money to complete the drainage works in accordance with the plans, or if for any other unavoidable cause it shall be necessary to raise a greater sum to complete such drainage works, the board of drainage commissioners, having first obtained the approval of the clerk of the superior court, shall prepare new assessment rolls upon all the lands in the district upon the original basis of classification of benefits and increase the same in sufficient sums to equal the deficit thereby created, and the same shall constitute the new assessment rolls until changed according to law, and shall be certified to the tax collector as herein provided.

5. *Additional bonds issued.* If for any of the causes hereinbefore recited in this section, or for any other cause, a sum of money greater than the proceeds of sale of the drainage bonds shall become necessary to complete the drainage system, and the board of drainage commissioners shall determine that the amount to be raised is greater than can be realized from the collection of one annual assessment upon the lands in the district without imposing an undue burden upon the lands, or if it is advisable or necessary to raise the money more expeditiously, then and under such conditions additional bonds may be issued in such aggregate sum as may be necessary.

6. *Manner of issue.* The proceedings for the issue of such additional bonds shall be substantially as follows: The board of drainage commissioners shall file their petition with the clerk of the superior court, setting forth all the facts which require the expenditure of more money and the issue of additional bonds to complete the drainage system, which shall be accompanied by the recommendation of the drainage engineer who was one of the original viewers, or some other expert drainage engineer selected by the drainage commissioners; whereupon the court shall issue a notice to all the owners of land within the district reciting the substance of the petition and directing each to appear before the court on a day certain, not less than twenty days after the service upon all the parties, and to show cause, if any they have, why the additional bonds should not be authorized, which notice shall be served personally on each such landowner by reading the same, and by leaving a copy, and if the same cannot be personally served, then it shall be served in the manner authorized by law. Any landowner may file an answer denying any material allegation in the petition or setting forth any valid objection to same before the return day thereof.

Upon the day when the notice is returnable, or on such day as to which the same may have been continued, the court shall proceed to hear the petition and

answers. If the court shall find that the allegations of the petition are true, and that the issue of additional bonds is advisable or necessary, the court shall make an appropriate order authorizing and directing the issue of such additional bonds, fixing the amount of such issue, the date of same, the time when the interest and principal shall be payable, and all other matters necessary and appropriate in the premises. Any landowner may appeal from the order of the clerk of the superior court, and on such appeal only the issues raised in the answer shall be considered, and such appeal and the further procedure thereon shall be as prescribed in special proceedings, except as modified by this subchapter.

After the court shall have ordered the additional issue of bonds, the further procedure as to the assessment rolls, the levying and collecting of the drainage taxes, the disbursement of the revenue therefrom for the payment of such bonds and interest thereon, and all further procedure shall be the same as required for the establishment of drainage districts. The additional bonds issued shall not exceed twenty-five per cent of the total amount originally issued. The additional issue of bonds shall bear six per cent interest per annum and may be made payable in ten annual installments, or in lesser number of annual installments as nearly equal as may be, as recommended by the board of drainage commissioners and approved by the court.

1909, c. 442, s. 35; 1911, c. 67, s. 15.

Section (subsection 3) referred to in *Comrs. v. Lewis*, 174-528.

5373. Subdistricts formed. Subdistricts may be formed by owners of land in main districts theretofore established in the manner provided for the organization of main districts. Such subdistricts shall have the right to use the ditches or canals of the main districts for outlets. The formation of subdistricts shall not operate to release the lands in any subdistrict from the payment of any assessment or levy made prior to the formation of such subdistricts, nor from any assessment which may thereafter be made for the completion and maintenance of the canals in main districts, or for the payment of the principal and interest on any indebtedness incurred by the main district, nor shall it give the subdistrict any claim on the funds of such main district for its local use. It shall be the duty of the drainage commissioners of the main district to control all matters pertaining to the main district drainage. Drainage commissioners for the subdistricts shall have authority and control over all matters pertaining to drainage within their respective subdistricts, except such work as belongs exclusively to the main district.

1917, c. 152, s. 8.

ART. 9. REPORT OF OFFICERS

5374. Drainage commissioners to make monthly statement. It shall be the duty of the commissioners of all drainage districts in the state of North Carolina organized under the provisions of the laws thereof to file with the clerk of the superior court in the county where such district is organized a monthly statement or account during the course of construction of canals for the district, showing the receipts and expenditures of all funds coming into their hands belonging to such drainage district for the period of one month prior to the day

on which the same is filed, and also to post a copy of such statement or account at the courthouse door in the county. Thereafter all statements or accounts shall be filed and posted every sixty days. Such statement or account shall be certified by the chairman of the board of commissioners of each drainage district and shall be attested by the secretary thereof, and a copy thereof shall be filed and kept as a part of the minutes of the district.

1917, c. 72, s. 1.

5375. Annual report. At the end of each fiscal year the board of commissioners of all drainage districts in the state of North Carolina shall file with the clerk of the superior court in the county where the district is organized a verified itemized statement of receipts and expenditures of all funds belonging to the district during the fiscal year just closed, and shall post a copy of same at the courthouse door in the county where the district is organized, and, if there be a newspaper published in the county, shall publish such account therein.

1917, c. 72, s. 2.

5376. Penalty for failure. Any board of commissioners of any drainage district in the state, and each of the members thereof, which shall fail or refuse to file the statements or accounts, and shall fail to post or publish the same as provided in the two preceding sections, shall be deemed guilty of a misdemeanor and upon conviction shall be punished in the discretion of the court.

1917, c. 72, s. 3.

5377. Auditor appointed. The board of county commissioners of each county in which one or more drainage districts have been established shall, annually, on the first Monday in May, appoint one of the members of the finance committee of the county, if the county has such finance committee, who shall be designated "Auditor for Drainage District"; but if the county has no finance committee, then the board of county commissioners shall appoint an intelligent and competent person of sufficient experience who shall be designated as the "Auditor for Drainage District." Such auditor shall receive such compensation as shall be agreed upon by the board of county commissioners, to be paid out of the general fund of said district, but not to exceed fifty dollars annually.

1917, c. 152, s. 10; 1919, c. 208, s. 3.

5378. Duties of the auditor. The auditor for the drainage district will be required to examine the assessment roll and the records and accounts of the sheriff or tax collector as to the assessment roll which went into his hands on the previous first Monday in September and for all previous years as to which the records and accounts of the sheriff or tax collector have not been audited.

The auditor shall for each of such years make a report as to each drainage district, showing the total amount of drainage assessments due for each year, the amount collected by the sheriff up to the fifteenth day of May of the following year, the names of the owners of land, and a brief description of the lands on which the drainage assessments have not been paid, and the total amount of unpaid drainage assessments, with any further data or information which the auditor may regard as pertinent.

If lands in the district lie in other counties, the auditor for the county in which the district was established shall also examine the records of the sheriff or tax collector for such other counties.

The auditor shall also examine the books of the treasurer of the county for similar years, and he shall report the amount of drainage assessments paid to the treasurer by the sheriff or tax collector for each year, and the amounts paid out by the treasurer during such years, and for what purposes paid. It shall be the duty of the sheriff and treasurer to permit the auditor to examine their official books and records and to furnish all necessary information, and to assist the auditor in the discharge of his duties.

The auditor shall make a report to the board of county commissioners on or before the first Monday in July following his appointment, and he shall deliver a duplicate of such report to the chairman of the board of drainage commissioners of each drainage district established in the county.

If the sheriff has not collected all of the drainage assessments, or has not paid over all collections to the county treasurer, or if the treasurer has not made disbursements of the drainage funds as required by law, or has not in his hands the funds not so disbursed by him, it shall be the duty of the auditor to so report, and to prepare two certified copies of his report, one of which shall be delivered to the judge holding a term of superior court in the county following the first Monday in July, and a copy to the solicitor of the judicial district in which the county is located, and it shall be the duty of such solicitor to examine carefully such report and to institute such action, civil or criminal, against the sheriff or tax collector or the treasurer, as the facts contained in the report may justify, or as may be required by law.

1917, c. 152, s. 10.

ART. 10. GENERAL PROVISIONS

5379. Construction of drainage law. The provisions of this subchapter shall be liberally construed to promote the leveeing, ditching, draining, and reclamation of wet and overflowed lands. The collection of the assessment shall not be defeated, where the proper notices have been given, by reason of any defect in the proceedings occurring prior to the order of the court confirming the final report of the viewers; but such order or orders shall be conclusive and final that all prior proceedings were regular and according to law, unless they were appealed from. If on appeal the court shall deem it just and proper to release any person or to modify his assessment or liability, it shall in no manner affect the rights and legality of any person other than the appellant, and the failure to appeal from the order of the court within the time specified shall be a waiver of any illegality in the proceedings, and the remedies provided for in this subchapter shall exclude all other remedies.

1909, c. 442, s. 37.

Liberal construction required: *Banks v. Lane*, 170-14; *Griffin v. Comrs.*, 169-642; *Comrs. v. Engineering Co.*, 165-37. The proceedings are flexible in their nature, and changes may be made from time to time as the conditions may require: *In re Drainage District*, 175-270; *Staton v. Staton*, 148-490.

When the proper notices have been given, the order of court confirming final report is conclusive as to regularity unless appeal is taken: *Taylor v. Comrs.*, 176-217; *Lumber Co. v. Drainage Comrs.*, 174-647; *Banks v. Lane*, 171-505. The proceedings cannot be attacked collaterally: *Newby v. Drainage District*, 163-24.

5380. Removal of officers. Any engineer, viewer, superintendent of construction or other person appointed under this act may be removed by the court, upon petition, for corruption, negligence of duties, or other good and satisfactory cause shown.

1909, c. 442, s. 38.

5381. Local drainage laws not affected. This subchapter shall not repeal or change any local drainage laws already enacted.

1909, c. 442, s. 38½.

5382. Punishment for violating law as to drainage districts. If any person shall violate any of the provisions of law in reference to drainage districts as provided in this chapter, or shall leave any log, brush, trash, or other thing where it is liable to wash into an adjacent stream and obstruct the flow of water or cut any tree so as to fall in a stream, or place any other obstruction in a stream in a drainage district, he shall be fined not more than fifty dollars or imprisoned not more than thirty days.

Rev., s. 3378; 1905, c. 541, ss. 7, 9.

CHAPTER 95

EDUCATION

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- 5766. Parents, etc., failing to send to school guilty of misdemeanor; provisos.
- 5767. Duties of census taker and county superintendent.
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- 5769. Blind children to attend school; age limits; minimum attendance.
- 5770. Parents, etc., failing to send guilty of misdemeanor; provisos.

- 5771. Duties of census taker and county superintendent.
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ART. 51. COMMERCIAL SCHOOLS.

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- 5779. Blanks for reports and licenses; disposition of license tax.
- 5780. Application of article.

SUBCHAPTER I. APPLICATION OF CHAPTER

ART. 1. CERTAIN SCHOOLS EXCEPTED AND REGULATED

5383. Application of chapter. The provisions of this chapter shall not, unless the article or section indicates otherwise, apply to any township, city, or town now levying a special tax for schools and operating under special laws or charters, or to schools operating under a district superintendent in accordance with the provisions of section 5431.

School districts in any city or town which, in accordance with said section 5431, have employed a district superintendent as provided in the section are hereby continued, and all vacancies in the school committees of such districts shall be filled by the county board of education. If such districts comprise a township, there shall not be appointed township school committeemen for such township, and all apportionments shall be made directly to committees of the districts.

All schools receiving any part of the public school funds shall be under the general supervision of the state superintendent of public instruction, and they shall be required to make to the state superintendent and to the county superintendent such reports as these officers shall demand and as are made to them by other public schools.

Rev., 4029; 1901, c. 4, s. 73; 1903, c. 435, s. 25; 1907, c. 835, s. 1 (a).

This section is constitutional, and was not repealed by the act of 1913, c. 149, requiring the apportionment of the school fund in the county so as to give the same length of term, as nearly as may be, each year: *School Comrs. v. Board of Education*, 169-196.

SUBCHAPTER II. ADMINISTRATIVE ORGANIZATION

ART. 2. THE STATE BOARD OF EDUCATION

5384. Incorporation and general corporate powers. The governor, lieutenant-governor, secretary of state, treasurer, auditor, superintendent of public instruction, and attorney-general shall constitute the state board of education, and by the name, the State Board of Education, are created a corporation, with the right to sue and be sued, to have a common seal, to take, hold, and dispose of property, to make contracts and by-laws; and it is vested with all other powers conferred

on corporations under the chapter on corporations, so far as such powers are necessary or convenient to the attainment of the object of the board or to the performance of its duties.

Const., Art. IX, ss. 8, 9, 10; Rev., s. 4030; Code, s. 2503; 1881, c. 200; 1903, c. 567, s. 7.

See *County Board v. State Board*, 106-81.

5385. Succeeds to "President and directors of literary fund of North Carolina." The state board of education shall succeed to all the powers and trusts of the "President and directors of the literary fund of North Carolina," and shall have full power to legislate and make all needful rules and regulations for the government of the public schools and for the management of the state educational fund; but all such acts, rules, and regulations of the board may be altered, amended, or repealed by the general assembly, and when so altered, amended, or repealed shall not be reenacted by the board, and the board shall succeed to and have all the property, powers, rights, privileges, and advantages which in any wise belonged or appertained to the "President and directors of the literary fund in North Carolina," and may, in its own name, assert, use, apply, and enforce the same.

Const., Art. IX, s. 10; Rev., s. 4033; Code, s. 2506; 1881, c. 200, s. 4; R. C., c. 66; R. S., cc. 66, 67.

NOTE.—As to "state literary fund," see s. 5480.

See *Board of Ed. v. Makely*, 139-34.

5386. Officers; quorum; meetings; expenses. Of the board, the governor shall be president, the superintendent of public instruction shall be secretary, and the treasurer of the state shall be treasurer. A majority of the board shall constitute a quorum for the transaction of business. The board shall hold its meetings in the executive office, and shall meet at such times as a majority of the members shall appoint; but the governor may call a meeting at any time. The contingent expenses of the board shall be provided for by the general assembly.

Const., Art. IX, ss. 9, 12, 13; Rev., s. 4031; Code, s. 2504; 1881, c. 200, s. 2.

5387. Record of proceedings. All the proceedings of the board shall be recorded in a well-bound and suitable book, which shall be kept in the office of the superintendent of public instruction.

Rev., s. 4032; Code, s. 2505; 1881, c. 200, s. 3.

5388. Reports to general assembly. The state board of education shall report to the general assembly the manner in which the state literary fund has been applied or invested, with such recommendations for the improvement of the same as to it shall seem expedient.

Rev., s. 4034; Code, s. 2507; R. C., c. 66, s. 4; 1825, c. 1268, s. 2; 1903, c. 567, s. 1.

5389. Investments. The state board of education is authorized to invest in North Carolina four per cent bonds or in other safe interest-bearing securities, the interest on which shall be used as may be directed from time to time by the general assembly for school purposes.

Rev., s. 4035; 1891, c. 369.

5390. State treasurer keeps accounts of, and reports to general assembly. The state treasurer shall keep a fair and regular account of all the receipts and disbursements of the state literary fund, and shall report the same to the general assembly at the same time when he makes his biennial account of the ordinary revenue.

Rev., s. 4034; Code, s. 2507; R. C., c. 66, s. 4; 1825, c. 1268, s. 2; 1903, c. 567, s. 1.

ART. 3. STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

5391. Office at capitol; copies of papers therein. The superintendent of public instruction shall keep his office at the seat of government. Copies of his acts and decisions and of all papers kept in his office and authenticated by his signature and official seal shall be of the same force and validity as the original. He shall be furnished with such offices, heat, and stationery as shall be necessary for the efficient discharge of the duties of his office.

Rev., s. 4089; 1900, c. 525.

5392. Powers and duties. The state superintendent of public instruction is empowered and it shall be his duty:

1. *Looks after schools, reports to governor.* To look after the school interests of the state, and to report biennially to the governor at least five days previous to each regular session of the general assembly. His report shall give information and statistics of the public schools, and recommend such changes in the school law as shall occur to him.

2. *Directs schools, enforces and construes school law.* To direct the operations of the public schools and enforce the laws and regulations in relation thereto. The county board of education and all other school officers in the several counties shall obey the instructions of the state superintendent and accept his constructions of the school law.

3. *Receives evidence as to county superintendent's performance of duties.* To receive evidence as to unfitness or negligence of the county superintendent, and when necessary to report it to the county board of education for action.

4. *Sends circular letter to school officers.* To send to each school officer a circular letter enumerating his duties as prescribed in this chapter.

5. *Investigates other school systems.* To correspond with leading educators in other states, to investigate systems of public schools established in other states, and, as far as practicable, to render the results of educational efforts and experiences available for the information and aid of the legislature and the state board of education.

6. *Acquaints himself with local educational wants, delivers lectures, etc.* To acquaint himself with the peculiar educational wants of the several sections of the state, and to take all proper means to supply such wants, by counseling with county boards of education and county superintendents, by lectures before teachers' institutes, and by addresses before public assemblies on subjects relating to public schools and public school work.

7. *Travels in connection with loan fund, etc.* To go to any county when necessary for the due execution of the law creating a permanent loan fund for the

erection of public schoolhouses. He shall include in his annual reports a full showing of everything done under the provisions of the law creating such permanent loan fund.

8. *Signs requisitions on auditor.* To sign all requisitions on the auditor for the payment of money out of the state treasury for school purposes.

9. *Has publications made, etc.* To have the school laws published in pamphlet form and distributed on or before the first day of May of each year; to have printed and distributed such educational bulletins as he shall deem necessary for the professional improvement of teachers and for the cultivation of public sentiment for public education; and to have printed all forms necessary and proper for the purposes of this chapter.

Rev., ss. 4089, 4090, 4091, 4092; 1900, c. 525; 1901, c. 4, ss. 8, 9; 1903, c. 435, s. 1; 1903, c. 751, ss. 11, 12; 1909, c. 525, s. 2.

ART. 4. STATE BOARD FOR VOCATIONAL EDUCATION

5393. State board for vocational education created. There is hereby created a state board for vocational education, to consist of four members, as follows: the state superintendent of public instruction and three other members, to be appointed by the governor, one to represent agriculture, one to represent home economics, and one to represent trades and industries. The terms of office of these members shall be, for one member two years, for one member four years, and for one member six years, who shall serve till their successors are appointed; and thereafter each member shall be appointed for a term of four years.

1919, cc. 119, s. 3, 131, s. 3.

5394. Powers and duties of board. The state board for vocational education shall have all necessary authority to coöperate with the federal board for vocational education in the administration of the federal vocational educational act, accepted by section 5502 of this chapter: to administer any legislation pursuant thereto enacted by the state of North Carolina, and to administer the funds provided by the federal government and the state of North Carolina under the provisions of this article, for the promotion of vocational education in agricultural subjects, trade and industrial subjects and home economics subjects. It shall have full authority to formulate plans for the promotion of vocational education in such subjects as an essential and integral part of the public school system of education in the state of North Carolina, and to provide for the preparation of teachers in such subjects. It shall have full authority to fix the compensation of such officials and assistants as may be necessary to administer the federal act and this article for the state of North Carolina, and to pay such compensations and other necessary expenses of administration from funds appropriated under section 5503. It shall have authority to make studies and investigations relating to vocational education in such subjects; to publish the result of such investigations, and to issue other publications as seem necessary by the board; to promote and aid in the establishment by local communities of schools, departments, or classes giving instruction in such subjects; to coöperate with local communities in the maintenance of such schools, departments, or classes; to prescribe qualifications for the teachers, directors, and supervisors of such subjects, and to have

full authority to provide for the certification of such teachers, directors, and supervisors; to coöperate in the maintenance of classes supported and controlled by the public for the preparation of teachers, directors, and supervisors of such subjects, or to maintain such classes under its own direction and control; to establish and determine by general regulations the qualifications to be possessed by persons engaged in the training of vocational teachers.

1919, cc. 119, s. 5, 131, s. 5.

5395. State superintendent to enforce article. The state superintendent of public instruction shall serve as executive officer of the state board for vocational education, and shall designate, by and with the advice and consent of the board, such assistants as may be necessary to properly carry out the provisions of this article. The state superintendent shall also carry into effect such rules and regulations as the board may adopt, and shall prepare such reports concerning the condition of vocational education in the state as the board may require.

1919, cc. 119, s. 4, 131, s. 4.

5396. Coöperation of county authorities with state board; funds. The county board of education, board of county commissioners, or the board of trustees of any county or city system may coöperate with the state board for vocational education in the establishment of vocational schools or classes giving instruction in agricultural subjects, or trade or industrial subjects, or in home economics subjects, and may use moneys raised by public taxation in the same manner as moneys are used for other public school purposes: Provided, that nothing in this article shall be construed to repeal any appropriations heretofore made by any of said boards for said purposes.

1919, cc. 119, s. 6; 131, s. 6.

5397. Report to governor. The state board for vocational education shall make a report annually to the governor, setting forth the conditions of vocational education in the state, a list of the schools to which federal and state aid have been given, and a detailed statement of the expenditures of federal funds and the state funds provided for in section 5503.

1919, cc. 119, s. 8, 131, s. 8.

ART. 5. COLLEGE COMMISSION REGULATING DEGREES

5398. Right to confer degrees restricted. No educational institution hereafter created or established by any person, firm, or corporation in this state shall have power or authority to confer degrees upon any person except as herein provided.

1919, c. 264, s. 1.

5399. College commission created; investigations. A college commission is hereby created consisting of the state superintendent of public instruction, ex officio chairman, and four others to be appointed by the governor, to hold office for a term of five years or until their successors are appointed. The persons so appointed shall meet upon the call of the governor and adopt rules of procedure for the commission. Institutions described in the preceding section shall not have power to confer degrees until the merits of the application from an educational standpoint have been passed upon by the commission.

1919, c. 264, s. 2.

5400. Commission empowered to grant license to confer degrees. The commission herein created is authorized to issue its license to confer degrees in such form as it may prescribe to any educational institution hereafter established by any person, firm, or corporation in this state; no educational institution hereafter established in the state shall be empowered to confer degrees unless it has income sufficient to maintain adequate faculty and equipment sufficient to provide adequate means of instruction in the arts and sciences; and unless its baccalaureate degree is conferred only upon students who have completed a four-year college course, preceded by the usual four-year high school course, or their equivalent.

1919, c. 264, s. 3.

5401. Inspection of institution; revocation of license. All institutions chartered under this article shall file such information with the state superintendent of public instruction as the commission may direct, and the commission shall have full authority to send an expert to visit any institution applying for a license to confer degrees under this article. And if any one of them shall fail to keep up the required standard the commission shall revoke the license to confer degrees, subject to a right of review of this decision by the judge of the superior court upon action instituted by the educational institution whose license had been revoked.

1919, c. 264, s. 4.

ART. 6. THE COUNTY BOARD OF EDUCATION

5402. Incorporation; general powers. The county board of education in each county shall consist, except as herein otherwise provided, of three men, elected by the general assembly from those men nominated as is hereinafter provided, and shall be a body corporate by the name and style of the County Board of Education ofCounty. By that name it shall be capable of purchasing and holding real and personal estate, of building and repairing school-houses, of selling and transferring the same for school purposes, and of prosecuting and defending suits for or against the corporation.

Rev., ss. 4119, 4121; 1901, c. 4, s. 13.

Member of the board is a public officer within the constitutional provision against holding two offices: *Barnhill v. Thompson*, 122-493. Cases of historical interest: *Green v. Owen*, 125-212; *Ledford v. Green*, 125-254; *Dalby v. Hancock*, 125-325.

5403. Local variation as to number of members of county boards. The county boards of education of Alamance, Bertie, Burke, Caswell, Camden, Chatham, Cherokee, Columbus, Cumberland, Durham, Franklin, Gates, Haywood, Hyde, Jackson, Macon, Mecklenburg, Pamlico, Person, Richmond, Rockingham, Surry, and Union counties shall each consist of five members.

1919, cc. 184, s. 2, 315, s. 1.

5404. Nominations by county primaries; elections by general assembly. In all the counties of the state there shall be nominated in the year one thousand nine hundred and twenty, and biennially thereafter, at the party primaries or conventions, at the same time and in the same manner as that in which other county officers are nominated, a candidate or candidates, by each political party of the

state, for member or members of the county board of education to take the place of the member or members of said board whose term next expires. The names of the persons so nominated in such counties shall be duly certified by the chairman of the county board of elections within ten days after their nomination is declared by said county board of elections, to the secretary of state, who shall transmit the names of all persons so nominated, together with the name of the political party nominating them, to the next session of the general assembly within ten days after it convenes. It shall be the duty of the general assembly to elect or appoint one or more of the candidates so nominated as a member or members of the county board of education for such county. Upon failure of the general assembly to elect or appoint members as herein provided, such failure shall constitute a vacancy, which shall be filled by the state board of education. The term of office of each member shall begin on the first Monday of July of the year in which he is elected and shall continue until his successor is elected and qualified.

Rev., s. 4119; 1917, c. 74, ss. 1, 2; 1919, c. 315.

5405. County board of elections to provide for nominations. The county board of elections, under the direction of the state board of elections, shall make all necessary provisions for such nominations as are herein provided for.

1917, c. 74, s. 4.

5406. Members to qualify. Those persons who shall be elected members of the county board of education by the general assembly must qualify by taking the oath of office on or before the first Monday in July next succeeding their election. A failure to qualify within that time shall constitute a vacancy. Those persons elected or appointed to fill a vacancy must qualify within thirty days after notification thereof. A failure to qualify within that time shall constitute a vacancy.

Rev., s. 4120; 1919, c. 315, s. 2.

5407. Vacancies in nominations. If any candidate shall die, resign, or for any reason become ineligible or disqualified between the date of his nomination and the time for the election by the general assembly of the member or members of the county board of education for the county of such candidate, the vacancy caused thereby may be filled by the action of the county executive committee of the political party of such candidate.

1917, c. 74, s. 2.

5408. Vacancies in office. All vacancies in the membership of the board of education in such counties by death, resignation, or otherwise shall be filled by the remaining members of said county board of education until the meeting of the next regular session of the general assembly, and then for the residue of the unexpired term by that body. If the vacancy to be filled by the general assembly in such cases shall have occurred before the primary or convention held in such county, then and in that event nominations for such vacancies shall be made in the manner hereinbefore set out, and such vacancy shall be filled from the candidates nominated to fill such vacancy by the party primaries or convention of such county. All vacancies that are not filled by the remaining members of the board under the authority herein contained within thirty days from the occurrence of such vacancies shall be filled by appointment by the state board of education.

1917, c. 74, s. 3; 1919, c. 315, s. 1.

5409. Eligibility for the office. No person shall be eligible as a member of the county board of education who is not known to be a man of intelligence, of good moral character, of good business qualifications, and heartily in favor of public education. No person while actually engaged in teaching in the public schools, or engaged in teaching in or conducting a private school in connection with which private school there is in any manner conducted a public school, shall be eligible as a member of the county board of education, except the county superintendent of education.

Rev., s. 4119; 1909, c. 525, s. 5; 1919, cc. 106, 315, s. 1.

5410. Meetings of board; duties thereat. The county board of education shall meet on the first Monday in January, April, July, and October, and may, if necessary, continue in session two days; and it may have called meetings, of one day each, as often as once a month, if the school business of the county requires it. It shall, at the meetings in January, April, July, and October, examine the books and vouchers and audit the accounts of the treasurer of the county school fund. The boards of education of the several counties shall cause to be published annually on the first Monday in August, in some newspaper published in the county, or at the courthouse door if there be no newspaper published therein, or in the printed annual school report of the county, an itemized statement of all receipts and expenditures of school funds.

Rev., s. 4133; 1891, c. 460; 1901, c. 4, s. 27; 1903, c. 435, s. 26; 1905, c. 533, s. 21; 1911, c. 135; 1913, c. 149.

For publication of receipts and disbursements, see section 2687.

5411. July meeting with county superintendent and treasurer; business thereat. On the first Monday in July the county board of education, county superintendent of public instruction, and treasurer shall meet at the office of the board and settle all the business of the preceding fiscal year. The board shall on that day examine the reports of treasurer and county superintendent, and, if found correct, shall direct them to be forwarded to the state superintendent within thirty days thereafter.

Rev., s. 4134; 1901, c. 4, s. 59; 1903, c. 435, s. 20; 1907, c. 835, s. 1(g).

5412. Powers; school control. 1. The county board of education shall have general control and supervision of all matters pertaining to the public schools in their respective counties, and are given the powers to execute and are charged with the due execution of the school law in their respective counties.

2. The county board of education shall have power and authority to fix and determine the method of conducting the public schools in their respective counties, so as to furnish the most advantageous method of education available to the children attending the public schools in the several counties of the state.

3. The time of opening and closing the public schools in the several public school districts of the state shall be fixed and determined by the county board of education in their respective counties. The board may fix different dates for opening the schools in different townships, but all the schools of each township must open on the same date, as nearly as practicable.

4. The board and the county superintendent of public instruction shall have full power to make all just and needful rules and regulations governing the

conduct of teachers and pupils as to attendance on the schools, discipline, tardiness, and the general government of the schools.

5. The county board of education shall have power to investigate and pass upon the moral character of any teacher in the public schools of the county, and to dismiss such teacher if found of bad moral character; also to investigate and pass upon the moral character of any applicant for a teacher's certificate or for employment as a teacher in any public school in the county. Such investigation shall be made after written notice of not less than ten days to the person whose character is to be investigated.

6. All powers and duties conferred and imposed by this chapter and other laws of the state respecting public schools which are not expressly conferred and imposed upon some other official are conferred and imposed upon the county boards of education.

Rev., ss. 4122, 4123, 4125, 4127; 1901, c. 4, ss. 14, 15; 1903, c. 435, s. 4.

NOTE.—For the power of the board as to the formation of and changes in school districts, see this chapter, art. 10.

In the absence of the abuse of discretion the courts will not interfere with the exercise of the powers granted to the board: *Pickler v. Board of Education*, 149-221; *Key v. Board of Education*, 170-123; *Dula v. School Trustees*, 177-426.

5413. Power to permit pupils to attend high school of adjoining county. The board of education of any county may, upon such terms as it may deem just, permit pupils entitled to attend a public high school in the county to attend a public high school of an adjoining county in all respects as if such high school were located in the county whose high schools such pupils are entitled to attend, when it appears that such permission can be given in justice to the schools and will be in the interest of justice and economy.

1917, c. 211.

5414. Powers; removing county school officials. In case the state superintendent shall have sufficient evidence at any time that any county superintendent of public instruction or any member of the county board of education is not capable of discharging or is not discharging the duties of his office, as required by this chapter, or is guilty of immoral or disreputable conduct, he shall report the matter to the county board of education, which shall hear evidence in the case; and if, after careful investigation, it shall find sufficient cause for his removal, it shall declare the office vacant at once and proceed to elect his successor. Either party may appeal from the decision of the county board of education to the state board of education, which shall have full power to investigate and review the decisions of the county board of education. This section shall not deprive any county superintendent of the right to try his title to his office in the courts of the state. In case the county superintendent shall have sufficient evidence at any time that any member of any school committee is not capable of discharging or is not discharging the duties of his office, he shall bring the matter to the attention of the county board of education, which shall thoroughly investigate the charges, and shall remove such committeeman and appoint his successor if sufficient evidence shall be produced to warrant his removal and the best interests of the schools demand it.

Rev., s. 4126; 1901, c. 4, ss. 10, 42.

5415. Powers; building and contracting for new schoolhouses. The building of all new schoolhouses shall be under the control and direction of and by contract with the county board of education. The board shall pay not over one-half of the cost of the same out of the fund set aside for building, under section 5487 of this chapter, and the school district in which any schoolhouse is erected shall pay the other part, and upon failure of any district to provide its part by private subscription or otherwise, the board is directed to take it out of the apportionment to that district; but the board shall not be authorized to invest any money in any new house that is not built in accordance with plans approved by the state superintendent. All contracts for buildings shall be in writing, and all buildings shall be inspected, received, and approved by the county superintendent of public instruction before full payment is made therefor.

Rev., s. 4124; 1903, c. 435, s. 4.

Section construed with reference to apportionment of reserve building fund under act of 1913, c. 149: *Comrs. v. Board of Education*, 163-404. The court will not interfere with the exercise of power as to building schoolhouses, unless the discretion is abused: *Pickler v. Board of Education*, 149-221; *Venable v. School Committee*, 149-120. See section 5670.

5416. Powers; school property. 1. The county board of education may receive any gift, grant, donation, or devise made for the use of any school within its jurisdiction.

2. The county board of education or the board of trustees of any incorporated or chartered school district may receive suitable sites for schoolhouses or school buildings by donation, may acquire such sites by purchase or by condemnation. In case of purchase, the county board of education or any board of trustees, as aforesaid, shall issue an order on its treasurer for the purchase money, and upon payment of the order the title to the site shall vest in the corporation in fee simple. Whenever the boards above mentioned are unable to obtain a suitable site for a school or school building by gift or purchase, such board shall report to the county superintendent of public instruction, who shall, upon five days notice to the owner or owners of the land, apply to the clerk of the superior court of the county in which the land is situated for the appointment of three appraisers, who shall lay off by metes and bounds not more than two acres, and shall assess the value thereof. The same means may be used to obtain more land in a district where there is a house or a site previously obtained, but not more than three acres shall be procured, including the site already obtained. They shall make a written report of their proceedings, to be signed by them, or by a majority of them, to the clerk within five days of their appointment, who shall enter the same upon the records of the court. The appraisers and officers shall serve without compensation. If the report is confirmed by the clerk, the chairman and the secretary of the board shall issue an order on the treasurer of the county school fund, or, if a graded school district, upon the treasurer of the graded school district, in favor of the owner of the land thus laid off, and upon the payment, or offer of payment, of this order the title to such land shall vest in fee simple in the corporation. Any person aggrieved by the action of the appraisers may appeal to the superior court in term, upon giving bond to secure the board against such costs as may be incurred on account of the appeal not being prosecuted with effect. If the lands sought to be condemned hereunder, or any part of said lands, shall be owned by a nonresident of the state, before

the clerk shall appoint appraisers therefor, notice to such nonresident owners shall be given of such proceeding to condemn, by publication for thirty days in some newspaper published in the county, and if no newspaper is published in the county, then by posting such notice at the courthouse door and three other public places in the county for the period of thirty days.

3. When in the opinion of the board any schoolhouse, schoolhouse site, or other public school property has become unnecessary for public purposes, it may sell the same at public auction, after advertisement of twenty days at three public places in the county, or at a private sale.

Rev., ss. 4121, 4130, 4131; 1901, c. 4, ss. 13, 31, 36; 1903, c. 435, s. 13; 1905, c. 533, s. 8; 1911, c. 135; 1913, c. 149, s. 1(b); Ex. Sess. 1913, c. 39, s. 1.

Exercise of discretion not interfered with by the court, unless abused: *Pickler v. Bd. of Education*, 149-221; *Venable v. School Com.*, 149-120.

5417. Powers; suits and actions. 1. The county board of education shall institute all actions, suits, or proceedings against officers, persons, or corporations, or their sureties, for the recovery, preservation, and application of all moneys or property which may be due to or should be applied to the support and maintenance of the schools, except in case of a breach of his bond by the treasurer of the county school fund, in which case action shall be brought by the county commissioners as is hereinafter provided.

2. In all actions brought in any court against a county board of education for the purpose of compelling the board to admit any child or children who have been excluded from any school, by the order of the board, the order or action of the board shall be presumed to be correct, and the burden of proof shall be on the complaining party to show to the contrary.

Rev., ss. 4121, 4125; 1901, c. 4, s. 13; 1903, c. 435, s. 4; 1915, c. 236, s. 1.

For separation of races in public schools, see section 5538.

5418. Power to subpœna and to punish for contempt. The board shall have power to issue subpœnas for the attendance of witnesses. Subpœnas may be issued in any and all matters which may lawfully come within the powers of the board and which in the discretion of the board require investigation; and it shall be the duty of the sheriffs, coroners, and constables to serve such subpœnas upon payment of their lawful fees.

The county board of education of each county shall have power to punish for contempt for any disorderly conduct or disturbance tending to disrupt it in the transaction of official business.

Rev., ss. 4127, 4128; 1901, c. 4, ss. 15, 28.

5419. Witness failing to testify misdemeanor. Any witness who shall wilfully and without legal excuse fail to appear before the county board of education to testify in any matter under investigation by the board shall be guilty of a misdemeanor, and fined not more than fifty dollars or imprisoned not more than thirty days.

Rev., s. 3840; 1901, c. 4, s. 15.

5420. Appeals to board from county officers. An appeal shall lie from all county school officers to the county board of education, and such appeals shall be regulated by rules to be adopted by the county board of education.

Rev., ss. 4125, 4127; 1901, c. 4, s. 15.

5421. Superior court to review board's action. The superior courts of the state may review any action of the county board of education affecting one's character or right to teach.

Rev., s. 4127; 1901, c. 4, s. 15.

5422. Deeds to property purchased. All deeds to the county board of education shall be registered and delivered to the clerk of the superior court for safe-keeping, and the secretary of the county board of education shall keep an index, by township and school districts, of all such deeds in a book for that purpose.

Rev., s. 4132; 1901, c. 4, s. 32; 1903, c. 435, s. 14.

5423. Deeds to property sold. The deed for property sold shall be executed by the chairman and secretary of the board, and the proceeds of the sale shall be paid to the treasurer of the county school fund.

Rev., s. 4130; 1901, c. 4, s. 36.

ART. 7. COUNTY SUPERINTENDENT OF PUBLIC INSTRUCTION

5424. Election; term of office. The county superintendent of public instruction shall be elected by the county board of education on the first Monday in July, one thousand nine hundred and five, and biennially thereafter. He shall hold his office for a term of two years from the date of his election and until his successor is elected and qualified. The county board of education shall provide the county superintendent with an office at the county seat, in the county courthouse if possible.

Rev., ss. 4135, 4139; 1907, c. 835, s. 1(1).

County superintendent is a public officer within the constitutional provision against holding more than one office: *Whitehead v. Pittman*, 165-89.

5425. Eligibility. The county superintendent shall be at the time of his election a practical teacher, and must secure before assuming the duties of the office a superintendent's certificate under the rules and regulations of the state board of examiners as provided for in article 32 of this chapter. He shall be a man of good moral character and of liberal education, and shall otherwise be qualified to discharge the duties of his office as required by law, due regard being given to experience in teaching.

Rev., s. 4135; 1919, c. 254, s. 5.

NOTE.—For the certification required of county superintendents, see this chapter, s. 5657.

5426. Not to teach; to reside in county. Every county superintendent shall reside in the county of which he is superintendent. It shall not be lawful for him to teach a school while the public schools of his county are in session; but the state board of education may, for good and sufficient reason, permit a county superintendent to so teach.

Rev., s. 4138; 1901, c. 4, s. 44.

5427. To take oath of office. The county superintendent of public instruction, before entering upon the duties of office, shall take oath for the faithful performance thereof.

Rev., s. 4088; 1901, c. 4, s. 45.

5428. Vacancies. In case of vacancy by death, resignation, or otherwise, in the office of county superintendent, such vacancy shall be filled by the county board of education.

Rev., s. 4135.

5429. Election reported to state superintendent. Immediately after the election of the county superintendent of public instruction the chairman of the county board of education shall report to the state superintendent of public instruction the name, address, experience, and qualifications of the person elected; and the person elected shall report to the state superintendent, as soon as he shall have qualified, the date of such qualification.

Rev., s. 4136; 1901, c. 4, s. 16; 1903, c. 435, s. 5.

5430. Joint appointment in adjoining counties. Any county whose total school fund does not exceed fifteen thousand dollars may unite with any adjoining county, and by agreement between the county boards of education of the two counties, meeting in joint session, may employ a county superintendent who shall devote his entire time to supervising impartially the educational work of the counties thus employing him. The agreement between the two county boards thus jointly employing one county superintendent, as to the apportionment of his salary and expenses, the division of his time and all other essential details, shall be recorded in the minutes of the board of education of each county.

Rev., s. 4135; 1913, c. 149, s. 1(d).

5431. Joint employment by districts in cities and towns. By and with the consent of the county board of education, the school committees of two or more contiguous districts in any city or town may, by a majority vote of the committee in each district, employ a practical teacher, who shall be known as the superintendent of the public schools of such districts, and he shall perform all the duties of the county superintendent of public instruction as to such districts, and shall make to the county superintendent all reports that may be necessary to enable him to make his reports to the state superintendent.

Rev., s. 4137; 1889, c. 199, s. 47; 1901, c. 4, s. 74.

NOTE.—For application of this chapter to schools operating under this section, see s. 5383.

5432. Advises with teachers; may suspend teachers. It shall be the duty of the county superintendent to advise with the teachers as to the best methods of instruction and school government, and to that end he shall keep himself thoroughly informed as to the progress of education in other counties, cities, and states. He shall have authority to correct abuses, and to this end he may, with the concurrence of a majority of the school committee, suspend any teacher who may be guilty of any immoral or disreputable conduct or may prove himself incompetent to discharge efficiently the duties of a public school teacher or who may be persistently neglectful of such duties.

Rev., s. 4141.

5433. Administers oaths to teachers and school officials. The county superintendent of public instruction shall have authority to administer oaths to teachers and all subordinate school officials where an oath is required of the same.

Rev., s. 4135; 1911, c. 135, s. 1(b).

5434. Must visit schools. The county superintendent shall be required to visit the public schools of his county while in session, and shall inform himself of the condition and needs of the various schools within his jurisdiction.

Rev., s. 4141.

5435. Holds teachers' meetings. The county superintendent shall hold each year not less than one teachers' meeting in each township, which the teachers shall be required to attend. If necessary, not exceeding three school days may be set apart for this purpose.

Rev., s. 4140; 1901, c. 4, s. 38; 1903, c. 435, s. 17; 1919, c. 254, s. 6.

5436. Attends meetings of state and district associations of superintendents. Unless providentially hindered, he shall attend continuously during its session the annual meeting of the state association of county superintendents and the annual meeting of the district association of county superintendents, and the county board of education of his county shall pay out of the county school fund his traveling expenses, including board, and allow him his per diem while attending such meeting; but county superintendents employed on salary shall not receive any per diem while in attendance on such meeting.

Rev., s. 4141; 1911, c. 135, s. 1(c).

5437. Looks after fines, forfeitures, and penalties. The county superintendent shall look after all fines, forfeitures, and penalties, see that the same are placed to the credit of the school fund, and report the same to the county board of education.

Rev., s. 4139; 1901, c. 4, s. 36.

5438. Is secretary to county board. The county superintendent shall be ex officio the secretary of the county board of education. He shall record all proceedings of the board, issue all notices and orders that may be made by the board pertaining to the public schools, schoolhouses, sites, or districts (which notices or orders it shall be the duty of the secretary to serve by mail or by personal delivery, without cost). He shall also record all school statistics. The records of the board and the county superintendent shall be kept in the office provided for that purpose by the board.

Rev., s. 4139; 1901, c. 4, s. 36.

5439. Distributes blanks and books. It shall be the duty of the county superintendent to distribute to the various school committees of his county all such blanks as may be furnished by the state superintendent of public instruction for reports of school statistics of the several districts; also blanks for teachers' reports and for orders on the treasurer of the county school fund for teachers' salaries. He shall also distribute to the school committees school registers for their respective districts and necessary record books; he shall advise with the committee as to the best methods of gathering the school statistics contemplated by such blanks, and by all proper means shall seek to have statistics fully and properly reported.

Rev., s. 4142; 1901, c. 4, s. 40.

5440. Provides for committee's reports on deaf, dumb, and blind children. It shall be the duty of the county superintendent to require of the school committees, in enumerating the number of school children, to make a statement in the report of the number of deaf and dumb and blind children between the ages of six and twenty-one years, designating the race and sex, and the address of the parent or guardian of such children; and the county superintendents are hereby required to furnish such information to the principals of the deaf and dumb and blind institutions; and the superintendent of public instruction, in preparing blanks for reports required to be made to him, shall include questions the answers to which will furnish the information required by this section.

Rev., s. 4144; 1901, c. 4, s. 43.

See sections 5740, 5769.

5441. Reports monthly to county board. The county superintendent is required to make at the end of each calendar month during the year a brief report to the county board of education, setting forth a statement of his work and activities and of the educational progress in the county for the month. This report shall be made on blanks prepared and furnished by the state department of public instruction, and a copy of each monthly report shall be sent to the state superintendent of public instruction.

Rev., s. 4141; 1917, c. 285, s. 2.

5442. Reports annually to state superintendent; contents of report. On or before the first Monday in July of each year it shall be the duty of each county superintendent to report to the state superintendent of public instruction an abstract statement of the number, grade, race, and sex of the teachers examined and approved by him during the year; also the number of public schools taught in the county during the year for each race, the number of children of school age in each school district, the number enrolled in each school district, the average daily attendance in each district, by race and sex, and the number of all persons in the county between the ages of twelve and twenty-one who cannot read and write. He shall also report, by race and sex, the number of pupils enrolled in all the schools, their average attendance, the average length of terms of the schools, and the average salary for the teachers of each race; the number of school districts for each race, and any new school districts laid out during the year shall be specified in his report. He shall also report the number of public school-houses and the value of the public school property for each race, the number of teachers' institutes held, the number of teachers attending such institutes, together with suggestions as may occur to him promotive of the school interest of the county. He shall record in his book an accurate copy of such report.

Rev., s. 4143; 1901, c. 4, s. 41.

5443. Removal for nonperformance of duties. If any county superintendent fail or refuse to perform any of the duties required of him by this chapter, he shall be subject to removal from his office by the county board of education upon the complaint of the state superintendent of public instruction.

Rev., s. 4143; 1901, c. 4, s. 41.

ART. 8. THE TREASURER OF THE COUNTY SCHOOL FUND

5444. County treasurer is. The county treasurer of each county shall be the treasurer of the school funds in his county.

Rev., s. 4152; 1901, c. 4, s. 46.

Section referred to, Board of Education v. Comrs., 167-114. See sections 1390, 1391.

5445. Bond. Before entering upon the duties of his office the treasurer shall execute a justified bond, with security, in an amount to be fixed by the board of county commissioners, not less than the moneys received by him or his predecessor during the previous year, conditioned for the faithful performance of his duties as treasurer of the county school fund, and for the payment over to his successor in office of any balance of school moneys that may be in his hands unexpended. This bond shall be a separate bond, not including liabilities for other funds, and shall be approved by the board of county commissioners; and that board may from time to time, if necessary, require him to strengthen his bond.

Rev., s. 4152; 1901, c. 4, ss. 46, 47.

See section 1388.

5446. Action on bond, state on relation of county commissioners. The board of county commissioners shall bring action in the name of the state upon the relation of the board for any breach of the bond of the treasurer of the county school fund, and on its failure to bring such action it may be brought in the name of the state upon the relation of any taxpayer.

Rev., s. 4153; 1901, c. 4, s. 47.

See section 1401.

5447. Receives and disburses school funds. The treasurer shall receive and disburse all public school funds, and shall keep the same separate and distinct from all other funds.

Rev., s. 4152; 1901, c. 4, s. 46.

Section cited in Board of Education v. Comrs., 167-114.

5448. Keeps account of receipts; receives only money. The treasurer shall keep a book in which shall be entered a full and detailed account of all public school moneys received by him, the name of each person paying him school money, the source from which the same may have been derived, and the date of such payment. When the sheriff or other collecting officer pays over money to him, he shall designate the items, and these items shall be stated in the receipts given by the treasurer. In his settlement with the sheriff or other collecting officer of public school funds the treasurer shall receive money only.

Rev., ss. 4154, 4158; 1901, c. 4, ss. 52, 56.

Section cited in Board of Education v. Comrs., 167-114.

5449. Keeps account with each township and district. It shall be the duty of the treasurer of the county school fund to keep a book in which he shall open an account with each school district, showing the amount apportioned to such district. He shall record all payments of school money, giving the date, the amount, the person to whom paid, and for what purpose paid. He shall balance the ac-

count of each district annually on the thirtieth of June, and shall report by letter or printed circular, within ten days thereafter, such balances to the county board of education and to the school committee.

Rev., s. 4157; 1901, c. 4, s. 49; 1919, c. 254, s. 10.

5450. Disbursements. Every order for the payment of a teacher's salary, for building, repairs, school furnishing, or for the payment of money for any purpose whatsoever, before it shall be a valid voucher for the county treasurer, shall be signed first by at least two members of the school committee, then by the county superintendent. No order shall be signed by the county superintendent for more money than is to the credit of that district for the fiscal year, nor shall he endorse the order of any teacher who does not produce a certificate as required by law. The treasurer shall not pay any money for building or repairing any school-house unless the site on which it is located has been donated to or purchased by the county board of education and the deed for the same regularly executed and delivered to such board and probated and registered in the office of the register of deeds for the county and delivered to the clerk of the superior court, to be by him safely deposited with his valuable official papers and surrendered to his successor in office. The treasurer of the county school fund shall, on the last Saturday of each month, attend at his office for the purpose of paying school orders, but this shall not prevent the paying of orders at other times.

Rev., ss. 4155, 4156; 1901, c. 4, ss. 48, 58.

For teachers' vouchers, see section 5663. Mandamus to compel superintendent to approve teacher's voucher: *Ducker v. Venable*, 126-447. **School orders not valid until signed by the proper officer:** *Bank v. Warlick*, 125-593. **Treasurer cannot pay out school funds except upon order of the board of education or under this section:** *Board of Education v. Comrs.*, 167-114.

5451. Annual report to state superintendent. The treasurer of any county, town, or city school fund shall report to the state superintendent of public instruction on the first Monday of August of each year the entire amount of money received and disbursed by him during the preceding school year, designating by items the amounts received, respectively, from property tax, poll tax, liquor licenses, fines, forfeitures, and penalties, auctioneers, estrays, from the state treasurer and from other sources. He shall also designate by item the sum paid to teachers of each race, respectively, the sums paid for schoolhouses, school sites in the several districts, and for all other purposes, specifically and in detail, by item.

Rev., s. 4158; 1901, c. 4, ss. 51, 56; 1913, c. 149, s. 1(i).

5452. Report to county board. On the same date that he reports to the state superintendent he shall file a duplicate of such report in the office of the county board of education. He shall make such other reports as the county board may require from time to time.

Rev., s. 4158; 1901, c. 4, ss. 51, 56.

5453. Exhibits books, vouchers, and money to county board. The treasurer of the county school fund shall, when required by the county board of education, produce his books and vouchers for examination, and shall also exhibit all moneys due the public school fund of the county at such settlement required by this chapter.

Rev., s. 4160; 1901, c. 4, s. 50.

5454. Duties on expiration of term. Each treasurer of the county school fund, in going out of office, shall deposit in the office of the board of education of his county his books in which are kept his school accounts, and all records and blanks pertaining to his office. If his term expires on the thirtieth day of November during any fiscal school year, or if for any reason he shall hold office beyond the thirtieth day of November and not for the whole of the current fiscal school year, he shall at the time he goes out of office file with the county board of education and with his successor a report, itemized as required by law, covering the receipts and disbursements for that part of the fiscal school year from the thirtieth of June preceding to the time at which he turns over his office to his successor, and his successor shall include in his report to the state superintendent the receipts and disbursements for the current fiscal year.

Rev., s. 4159; 1901, c. 4, ss. 57, 58.

5455. Where treasurer's office abolished, banks, etc., to report. In all counties in which the office of county treasurer has been abolished all banks or other corporations handling the public school funds shall be required to make all reports required of the treasurer of the county school fund.

1915, c. 236, s. 1.

5456. Treasurers of school fund failing to report a misdemeanor. If any treasurer of the county, town, or city school fund shall fail to make reports required of him at the time and in the manner prescribed, or to perform any other duties required of him by law, he shall be guilty of a misdemeanor, and be fined not less than fifty dollars and not more than two hundred dollars, or imprisoned not less than thirty days nor more than six months, in the discretion of the court.

Rev., s. 3839; 1901, c. 4, s. 53; 1913, c. 149, s. 2.

ART. 9. SCHOOL COMMITTEE

5457. Membership; appointment. There shall be in each township a school committee, consisting of three persons, appointed by the county board of education in succession to the school committeemen appointed by the county board on the first Monday in July, nineteen hundred and thirteen. The county board at its meeting on the first Monday in July of each year shall appoint one member of the school committee in place of the member whose term has just expired.

But this provision shall not affect those counties wherein, on the first Monday in July, nineteen hundred and thirteen, the county board elected school committeemen by school districts and not by townships, and, in the case of such counties, the successors to school committeemen may, as their terms expire, be elected by districts.

Rev., s. 4145; 1913, c. 149, s. 1(e).

This is an office within the constitutional provision against holding more than one office: *Midgett v. Gray*, 158-133; s. c., 159-443.

5458. Term of office. The term of office of each school committeeman continues three years and until his successor is duly appointed and qualified.

Rev., s. 4145; 1913, c. 149, s. 1(e).

5459. Oath of office. Each school committeeman before entering on the duties of office shall take oath for the faithful performance thereof.

Rev., s. 4088; 1901, c. 4, s. 45.

5460. Vacancies. If a vacancy shall occur at any time by death, resignation, or otherwise, the county board shall fill such vacancy.

Rev., s. 4145.

5461. Eligibility. Each school committeeman shall be a man of intelligence, of good moral character, and of good business qualifications, and known to be in favor of public education.

Rev., s. 4145; 1913, c. 149, s. 1(e); 1917, c. 285, s. 3.

For eligibility of women on certain school boards, see section 5539.

5462. Compensation of members. The county board has the power to pay to each member of the township committee one dollar per day for not more than four days per annum; but committeemen elected for school districts shall serve without compensation. The township committee shall be paid for taking the census at the rate of two cents per name, and may be paid each one dollar per day for not exceeding four days each year for such additional services as may be rendered by the committee in the discharge of their legal duties.

Rev., s. 4145; 1909, c. 769, s. 1.

NOTE.—For compensation of census taker, see s. 5743.

5463. Organization of committee. The school committee, within twenty days after their election, shall meet and elect from their number a chairman and secretary, and shall keep a record of their proceedings in a book to be kept for that purpose. The name and address of the chairman and secretary shall be reported to the county superintendent and recorded by him.

Rev., s. 4146; 1901, c. 4, s. 18.

5464. Powers as to school property. The school committee shall be intrusted with the care and custody of all schoolhouses, schoolhouse sites, grounds, books, apparatus, or other public school property in the township, with full power to control the same as they may deem best for the interest of the public schools and the cause of education. Every township committee shall appoint one man in each school district in the township to look after the schoolhouse and property and advise with the committee.

Rev., ss. 4145, 4147; 1901, c. 4, s. 19.

5465. Lease of school grounds in cities or towns to municipalities for park purposes. The board of trustees of the schools of any incorporated city or town may, in their discretion, lease the school grounds within the corporate limits of the city or town to the proper city or town authorities for use as a public or municipal park during such period of the year as the same are not used for school purposes; and all money derived therefrom shall be used and accounted for by said school trustees exclusively for the maintenance of the public graded or high schools of such city or town.

1917, c. 102, s. 4.

5466. Powers; purchase of supplies. The committee shall have authority to purchase the supplies necessary for conducting the schools and for repairs, to an amount not to exceed in the aggregate the sum of twenty-five dollars in any one year for each school; but nothing in this section shall be so construed as to give school committees the right to make expenditures without the order of the county board. No committee shall give an order unless the money to pay it is actually to the credit of the district, and no part of the school fund for one year shall be used to pay school claims for any previous year.

Rev., ss. 4149, 4150; 1901, c. 4, ss. 21, 34, 35; 1903, c. 435, s. 16; 1905, c. 533, s. 19.

Officer cannot have personal interest in contract for supplies: See sections 4390, 4391.

5467. Keeps record of receipts, expenditures, and contracts. The school committee for each township or district shall keep a book in which shall be recorded an itemized statement of all moneys apportioned to, received, and expended by them for each school, and a copy of all contracts made by them with teachers.

Rev., s. 4149.

5468. Reports to board on schoolhouses and school property. The school committee shall report to the county superintendent, who in turn shall report to the county board of education, the number of public schoolhouses and the value of all public school property for each race, separately.

Rev., s. 4148; 1915, c. 236, s. 1(f).

ART. 10. SCHOOL DISTRICTS

5469. County board divides territory into school districts. The county board of education shall divide the townships, or the entire county or any part of the county, into convenient school districts, as compact in form as practicable. It shall consult the convenience and necessities of each race in setting the boundaries of the school district for each race.

Rev., s. 4129; 1917, c. 285, s. 1.

In the absence of misconduct or the violation of some statute the courts will not interfere with the action of the board in establishing school districts: *Pemberton v. Board of Education*, 172-552; *Pickler v. Board of Education*, 149-221; *Howell v. Howell*, 151-575.

5470. May be formed of portions of contiguous townships. Nothing in this chapter shall prevent the board, whenever it shall deem it necessary for the good of the public schools, from forming a school district out of portions of two or more contiguous townships.

Rev., s. 4129.

5471. By agreement formed of portions of contiguous counties. School districts may be formed out of portions of contiguous counties by agreement and consent of the county boards of education of the two counties. In case of the formation of such districts, the per capita part of the public school money due the children residing in one county shall be apportioned by the county board of education of that county and paid to the treasurer of the other county in which the schoolhouse is located, to be placed to the credit of the school district so formed.

Rev., s. 4129.

5472. Limitations on creation of new districts. The county board shall establish no new school in any township within less than three miles, by the nearest traveled route, of some school already established in that township. It shall not create any school district with less than sixty-five children of school age, unless such district shall contain at least twelve square miles or shall be separated by dangerous natural barriers from a schoolhouse in the district of which the proposed new district is a part. In no case shall any new district or school be established under this article if the number of schools or districts existing January first, one thousand nine hundred and nineteen, is increased thereby.

Rev., s. 4129; 1909, c. 856, s. 1; 1919, c. 254, s. 12.

The three-mile limit does not apply to rebuilding a schoolhouse on an old site or changing to a new site in the old district: *Pemberton v. Board of Education*, 172-552. For limitation as to number of children or extent of territory, see *Williams v. Comrs.*, 176-554.

5473. Redistricting and consolidating. The county board of education is hereby authorized and empowered to redistrict the entire county or any part thereof and to consolidate school districts wherever and whenever in its judgment the redistricting or the consolidation of districts will better serve the educational interests of the township, or the county, or any part of the county.

Rev., s. 4129; 1917, c. 285, s. 1.

5474. Changing boundaries. The county board of education of any county is authorized and empowered to change the boundary lines between local-tax school districts, urban and rural, and to consolidate such districts in that county upon satisfactory evidence furnished to the board that the convenience and best interests of the residents of the district require the change. A change in boundaries made under this authority shall not have the effect of releasing any taxpayer from the obligation of paying his school taxes, but shall only transfer the taxpayer and his property from one local-tax district to another.

Rev., s. 4129; 1911, c. 135, s. 1; 1917, c. 285, s. 5.

See *Marsh v. Early*, 169-465.

5475. Provision for transportation of pupils in consolidated districts. Upon the consolidation of two or more school districts into one by the county board of education, the said county board is authorized and empowered to make provision for the transportation of pupils in that consolidated district that reside too far from the schoolhouse to attend without transportation, and to pay for the same out of the apportionment to that consolidated district. The daily cost of transportation per pupil shall not exceed the daily cost per pupil of providing a separate school in a separate district for said pupils.

Rev., s. 4129; 1911, c. 135, s. 1(a).

5476. Interchange of pupils by counties. County boards of education of any two contiguous counties are authorized to transfer children from a school district of one county to the adjacent school district in the other county for the convenience of the children transferred, and to arrange by agreement for reasonable compensation out of the county school fund of the county from which such transfers are made, to be placed to the credit of the school district in the other county in which the children transferred attend school.

Rev., s. 4129; 1911, c. 135, s. 1; 1917, c. 285, s. 5.

5477. Credits on tuition to nonresidents whose children attend in district. Any parent or person in loco parentis residing outside of any special-tax district, urban or rural, chartered or otherwise, and owning property within said district whose child, children, or wards shall attend school in said district, shall be entitled to receive as a credit on the tuition of said child, children, or wards the amount of special school taxes paid on said property.

1915, c. 93.

5478. Enlargement of graded school districts in towns. Any graded school district in an incorporated city or town may be enlarged so as to include territory situate outside of and contiguous to the corporate limits of such city or town in the manner herein provided.

1. *Election upon petition by school authorities.* Upon the written petition of a majority of the members of the school committee or board of trustees of such graded school district, which petition shall describe the boundaries of the territory to be included, and which shall be indorsed by the county board of education, the board of county commissioners shall order an election to be held in the new territory to be so included.

2. *Law governing election.* The election so ordered shall be held in the manner and form provided by law for elections for the establishment of special school tax districts.

3. *Effect of election.* In case a majority of the qualified voters in the new territory shall vote at such election in favor of a special tax of the same rate as that authorized and collected in the graded school district to which the said territory is contiguous, then the said territory shall be added to and become a part of the said graded school district; and in case a majority shall vote against said tax the district shall not be so enlarged.

4. *Transfer of persons living contiguous into district.* Upon written petition of one or more inhabitants whose property is contiguous to said special chartered or local-tax district, the county board of education may transfer such individual or individuals to said district, and there shall be levied upon the property and poll of each individual so transferred the same tax as is levied upon other property and polls of said district.

5. *Levy and collection of tax.* Upon the enlargement of the graded school district as provided herein there shall be levied and collected annually in the new territory a special tax, which tax shall not exceed that levied and collected in the original graded school district. This tax shall be levied and collected by the county authorities in the same manner provided for the collection of other taxes.

6. *Tax to school funds.* Upon the collection of such tax it shall be placed to the credit of the committee or trustees of the said graded school district so enlarged.

1917, c. 104; 1919, c. 254, s. 17.

See Marsh v. Early, 169-465.

5479. Incorporation and boundaries of graded school districts. Every graded school district in this state which is situated entirely within the corporate limits of an incorporated city or town containing no other graded school district in whole or in part, and which, by reason of changes made in the corporate limits of such city or town after the establishment of such graded school district, is not

coterminous with such city or town, is hereby made coterminous with such city or town. Every graded school district in this state is hereby incorporated and authorized to adopt a corporate seal. The name of such corporation shall be the name by which such school district is known.

1919, c. 143.

SUBCHAPTER III. REVENUE: SOURCES AND APPORTIONMENT

ART. 11. STATE PUBLIC SCHOOL FUND

5480. State literary fund. All funds of the state heretofore derived from the sources enumerated in section four, article nine, of the state constitution, and all funds that may be hereafter so derived, together with any interest that may accrue thereon, shall be a fund separate and distinct from the other funds of the state, to be known as the State Literary Fund.

Rev., s. 4093; 1901, c. 4, s. 4; 1903, c. 567, s. 1.

NOTE.—From the state literary fund appropriations are made for loans to counties for schoolhouses, etc., and in consequence the fund is sometimes called "State Loan Fund," see sec. 5672.

5481. The state public school fund. There shall be annually levied and collected a tax of thirty-two cents on every hundred dollars valuation of taxable property in the state for the maintenance of the public schools of the state, and the funds derived therefrom shall be a separate fund in the hands of the state treasurer to be known as The State Public School Fund, and the treasurer shall, on the first day of December of each year, certify to the state board of education the amount of the funds derived or to be derived from said tax for that school year.

5482. Apportionment of state public school fund. Out of the state public year.

1919, c. 102, s. 1.

school fund the state board of education shall apportion annually to each county of the state, on or before the first day of January of every year, a sum sufficient to pay one-half the annual salary of the county superintendent and three months salary of all teachers of all sorts employed in the public schools of the county, including the teachers of city, town, township, and all special chartered schools, and one-third the annual salary of all city superintendents: Provided, that no part of this fund shall be used to pay the salaries of teachers who receive appropriations from other state funds.

1919, c. 102, s. 2.

5483. Reduction of special county and district taxes. The board of county commissioners of any county or any other governing body having authority, upon petition signed by a majority of the school committeemen of any local-tax district and approved by the county board of education, or upon petition signed by a majority of the school committeemen of any specially chartered school district, shall reduce the special-tax levy in said local-tax district or specially chartered school district: Provided, the reduction shall not be greater than the increase in the tax rate in that particular district that will result because of the operation of this article.

The county commissioners of any county, upon petition of a majority of the county board of education, shall reduce any special county school tax levy that has been voted on the county: Provided, such reduction shall not be greater than the increase that will result because of the operation of this article.

1919, c. 102, s. 3.

5484. Manner of payment. Upon requisition of the state superintendent of public instruction the state auditor shall issue his warrant upon the state treasurer, payable to the treasurer of the county school fund, for the apportionment made under this article to each county. The state treasurer is required to pay such warrant promptly upon presentation by the treasurer of the county school fund and, if necessary, to borrow in the name of the state the funds needed for such payments: Provided, that after the school year 1919-1920 the county board of education shall submit to the state board of education, together with the county budget, a certificate from the state tax commission to the effect that the property of said county has been assessed in accordance with the provisions of law.

1919, c. 102, s. 4.

5485. County board to submit budget to state superintendent; special county tax for six months term. On or before the first Monday of November of each year the county board of education shall submit to the state board of education on blanks furnished by the state superintendent of public instruction, its county school budget for the ensuing year. The county board of education shall further make oath that adequate provision has been made as required under this article for a six months school term in every school district of the county, including city or town public schools, the rate of special county school tax levied therefor, and the aggregate fund derived or to be derived therefrom. No county shall receive any part of the funds appropriated by the state under this article until it has levied the special county school tax herein required of it for a six months school term in every school district.

1919, c. 102, s. 5.

5486. County commissioners to levy required tax for six months school term. On or before the first Monday in May of each year the county board of education shall submit an itemized county school budget to the county commissioners, setting forth the amount of money needed to maintain the public schools of the county six months for the succeeding school year. Such budget shall also set forth the number of teachers, both white and colored, employed in each district and the salary fixed for each teacher, and such other information as may be required by the state superintendent of public instruction in the blanks to be furnished by him to each county board of education. The budget shall be sworn to and subscribed by the chairman of the county board of education and the county superintendent of schools. A copy thereof shall also be filed in the office of the state superintendent of public instruction. It shall then be the duty of the board of county commissioners, after deducting the amount to be received from the state public school fund, to levy annually a special tax on all property, real and personal, and on all taxable polls, subject to the constitutional limitation of the poll tax, in said county, sufficient to supply the deficiency shown by the budget to be needed for the support and maintenance of the public schools of said county

for six months in each school district. Such tax shall be annually levied and collected at the same time and in the same manner as other county taxes are levied and collected, and the funds derived therefrom, together with other school funds in their hands, shall be apportioned and expended by the county board of education for maintaining one or more public schools in each school district for a term of six months in each year: Provided, that no county shall be compelled to levy a special county tax of more than thirty-five cents on every one hundred dollars valuation of property, real and personal, and a corresponding tax on every taxable poll for said purpose, except as provided in the next succeeding section; and after every county has levied and collected the special county tax to the limit stated above, if the funds derived therefrom may be insufficient therefor, the county shall receive from the state public school fund an apportionment sufficient to bring the school term in every school district to six months.

1919, c. 102, s. 6.

The report of the board of education is in the nature of a recommendation to aid the judgment and discretion of the board of commissioners: Board of Education v. Comrs., 150-116.

The county commissioners are required to levy a sufficient tax to run the public schools for four (now six) months, under Const., Art. IX, and the limitations in Const., Arts. V and VII, do not apply: Collie v. Comrs., 145-170, overruling Barksdale v. Comrs., 93-473; Holwell v. Borden, 148-255; Board of Education v. Comrs., 150-116; Board of Education v. Comrs., 174-469. The expense of the state high schools in the county is to be considered and provided for: Board of Education v. Comrs., 174-469; but not the high schools in towns, organized under a special law, Ibid.

5487. Incidental expense fund. All poll tax, fines, forfeitures, penalties, and all public school revenues, other than that derived from the state public school fund and the special county tax, shall be placed to the credit of the incidental expense fund and the building fund, as provided in the budget, and if this amount is insufficient for these funds, the county board of education may provide in the county school budget for an additional amount not to exceed twenty-five per cent of the teachers' salary fund, and the county tax may be increased sufficiently beyond the maximum levy of thirty-five cents to provide this amount if it shall appear necessary to the county board of education and the county commissioners.

1919, c. 102, s. 7.

5488. Procedure in case of disagreement or refusal of county commissioners to levy school tax. In the event of a disagreement between the county board of education and the board of county commissioners as to the amount to be provided by the county for the maintenance of a six months school term, and as to the rate of tax to be levied therefor, or in the event of the refusal of any board of county commissioners to levy said tax, the county board of education shall bring action in the nature of a mandamus against the board of county commissioners to compel the levying of such special tax under the provisions of this article entitled Mandamus of the chapter on Civil Procedure. And it shall be the duty of the judge hearing the same to find the facts as to the amount needed and the amount available from the sources herein specified, which findings shall be conclusive, and to give judgment requiring the county commissioners to levy the sum which he finds necessary to maintain the schools for six months in every

school district in the county. Any board of county commissioners failing to obey such order and to levy the tax shall be guilty of a misdemeanor and shall be prosecuted therefor in the superior court.

1919, c. 102, s. 8.

The recommendation of the board of education is to aid the judgment and discretion of the county commissioners; but the county commissioners are required to levy sufficient tax, and may be indicted for failing to do so: Board of Education v. Comrs., 150-116.

5489. Consolidation of districts; elimination of small schools. The apportionment of the state public school fund shall be administered so as to encourage consolidation of districts and the elimination of small schools or small districts, and the state board of education may refuse to apportion any part of the fund to any school or district having an average daily attendance of less than fifteen pupils or to any new school or district created since January first, one thousand nine hundred and nineteen, if the number of districts or the number of separate schools in a county has been increased thereby: Provided, that no district shall be abolished if the geographical conditions are such that the children of the district cannot be annexed to some adjoining district without seriously limiting the educational opportunities of the children of the district.

1919, c. 102, s. 9.

5490. Requirements necessary to receive state fund. No school shall be entitled to receive an apportionment from the state public school fund or from the county school fund of any county for more than one teacher, except as follows: In a school where, during the preceding school year, except in case of an epidemic, the average number of children attending such school daily was not less than thirty pupils, funds may be apportioned for paying the salaries of two teachers; and in a school where, during the preceding school year, the average number of children attending such school daily was not less than sixty-five pupils, funds may be apportioned for paying the salaries of three teachers; and in schools where, during the preceding school year, the average number of children attending daily was not less than ninety-five pupils, funds may be apportioned for paying the salaries of four teachers; and in a school where, during the preceding school year, the average number of children attending such school daily exceeded ninety-five pupils, funds may be apportioned for one additional teacher for each thirty additional pupils in average daily attendance in the school: Provided, that for the encouragement of high school instruction the state superintendent of public instruction may formulate rules and regulations that will permit the payment of salaries to high school teachers having a smaller attendance of pupils per teacher than that specified in this section.

1919, c. 102, s. 10.

5491. Appropriations for superintendent of colored normal school, board of examiners, rural libraries. The salary and expenses of the superintendent of the state colored normal school, one thousand five hundred dollars; the salaries and expenses of the state board of examiners and institute conductors, twenty-five thousand dollars; the biennial appropriation for the rural libraries, seven thousand five hundred dollars, which have heretofore been appropriated from the state equalizing fund, shall be appropriated from the state public school fund.

1919, c. 102, s. 11.

5492. Appropriation for teacher training. There shall be set aside annually from the state public school fund a sum not exceeding fifty thousand dollars for promoting teacher training in the several counties, for the improvement of teachers now in service, and for the better supervision of rural schools. The state board of education is authorized to reserve annually out of this appropriation an amount not to exceed five hundred dollars, to be paid out upon requisition of the state superintendent of public instruction in defraying part of the necessary expense incurred in connection with the supervision and inspection of public high schools.

1917, c. 285, s. 4; 1919, cc. 102, s. 12, 254, s. 20.

ART. 12. COUNTY SCHOOL BUDGET AND TAXES

5493. County school budget required; contents. On or before the first Monday in May of each year the county board of education of each county shall prepare a school budget, which shall set forth the amount of money necessary to maintain the public schools of said county for six months in every school district for the succeeding school year. The county budget shall provide three separate school funds: (1) a teachers' salary fund; (2) an incidental expense fund; and (3) a building fund.

The budget for both the regular county schools and the specially chartered schools shall be made on blanks supplied by and in accordance with the directions of the state superintendent of public instruction, and it shall be unlawful for any part of the teachers' salary fund to be used for any other purpose than that specified in the budget, after it has been approved by the state board of education.

1919, c. 114, s. 1.

5494. Teachers' salary fund; basis of estimate. In estimating the amount necessary for the teachers' salary fund, the county board shall take as a basis for the year 1919-1920 the monthly salaries of the teachers of every school of said county for the year 1918-1919, and shall increase that amount for each school as follows, subject to such exceptions as may hereafter appear: (a) For teachers holding elementary certificates not less than twenty-five per cent increase; (b) primary and grammar certificates not less than fifteen per cent increase; (c) high school certificates ten per cent increase; (d) principals' certificates not less than ten per cent increase; (e) all superintendents of county and city schools an increase of not less than ten per cent.

The salary of each teacher holding a second-grade certificate shall not be greater than forty-five dollars per month.

Nothing in this section shall make it compulsory upon the county board of education to fix the monthly salaries of the teachers for any school larger than the following: (a) For inexperienced teachers, a salary not larger than the average salary of 1918-1919 of the teachers in the county holding the same grade certificates; (b) for teachers of successful experience of two or more years holding elementary certificates, sixty-five dollars per month; (c) special primary and grammar grade certificates, seventy dollars per month; (d) high school certificates, seventy-five dollars per month; (e) principals of elementary schools of

three teachers or more, one hundred dollars per month; (f) principals of high schools, one hundred and twenty-five dollars per month; and the apportionment from the state public school fund shall be made upon this salary basis.

A teacher holding a certificate of one class and teaching in another class of work shall be paid according to the class of work done, and not according to the class of certificate held.

The county board of education may in its discretion fix a salary schedule, not inconsistent with this article, based upon successful teaching experience and professional study; and nothing in this article shall operate against increasing the salary of teachers out of special tax funds.

If any school closed in 1918-1919 on account of the influenza, or for other causes, the salary or salaries that would have been paid to the teachers of that school if it had been in session shall be the basis upon which to calculate the fund for that school, subject to such increase as provided for the teachers of that school.

In no case shall the salary of any teacher be reduced by the operations of this section.

1919, c. 114, s. 2.

5495. Incidental expense fund; basis of estimate. The incidental expense fund shall provide fuel, janitors, school supplies, insurance, rent, professional study, special supervision of all sorts, and all administration expenses other than the salary of the county superintendent. The amount of this fund shall be derived by ascertaining the incidental expenses of the specially chartered schools for two-thirds of the annual expenses of the year 1918-1919, and the amount for the regular county schools for twelve months for the year 1918-1919, with an addition of ten per cent of these two amounts, which may be set aside as a special contingent fund for expenses not otherwise provided for. After deducting the contingent fund, the expense of the county superintendent, traveling expenses and per diem of the county board of education, and the fees or salary of the county treasurer from the total incidental expense fund, the per cent of the remainder that shall be apportioned to the special chartered school shall be the same as the per cent of the teachers' salary fund apportioned to said specially chartered school.

1919, c. 114, s. 3.

5496. Building fund; estimate. A building fund not to exceed twenty-five per cent of the total teachers' salary fund for the entire county may be set aside each year to be used in erecting school buildings, additions to buildings, dormitories, teachers' residences, repayment of loans to the state loan fund, sinking fund, permanent improvements, and other necessary buildings, and the per cent of this fund that shall be apportioned to the specially chartered schools shall be the same as the per cent of the teachers' salary fund apportioned to said specially chartered school.

1919, c. 114, s. 4.

Under former statute the graded schools were entitled to share in the reserve building fund: Comrs. v. Board of Education, 163-404.

5497. Lists of fines and penalties filed with county boards of education. The clerks of all state and municipal courts, justices of the peace, and the clerks or

other officials having in custody the records of any city or town in the state shall furnish to the county board of education of their respective counties, on the first Monday of July and January of each year, a detailed statement of fines, forfeitures, and penalties which go to the school fund, that have been imposed or which have accrued, this information to be furnished on blanks prepared by the state department of public instruction.

Rev., s. 4108; 1901, c. 4, s. 62; 1913, c. 149, s. 1(h).

Fines, etc., included in this section as belonging to school fund explained: Board of Education v. Henderson, 126-689; School Directors v. Asheville, 128-249; s. c., 137-503; Bearden v. Fullam, 129-479.

5498. Tax list to have separate columns for school taxes. The auditor shall include on the form which he furnishes to the board of county commissioners and on which the tax lists are to be made out, separate columns for school poll tax and school property tax, and for special county and district taxes on property and polls. In one of these columns shall be written the total poll tax levied by the state and by the county authorities for schools, and due by the taxpayer. In the other column shall be written the total property tax levied by the state and by the county authorities, and due by the taxpayer.

Rev., s. 4109; 1901, c. 4, s. 60; 1907, c. 835, s. 1(d).

5499. Register to furnish abstracts of lists to county board. The register of deeds shall furnish to the county board of education, as soon as the tax lists are made out, an abstract of such lists, showing in separate columns the total amount of poll tax on such lists, and also the total amount of property tax thereon, and also, in another column, the amount of special county and district poll taxes, and in a separate column the amount of special county and district property taxes; and shall furnish such other information from his office as the county board of education may require.

Rev., s. 4110; 1901, c. 4, s. 61; 1907, c. 835, s. 1(e).

Section referred to in Bd. of Ed. v. Comrs., 167-114.

5500. Sheriff's liability, civil and criminal, for failure to settle school tax. The sheriff of each county shall pay annually, in money, to the treasurer of the county school fund, on or before the thirty-first day of December of each year, the whole amount for school purposes collected by both state and county, less his lawful commission for collecting the same, and such sum as may be allowed on account of insolvents for the current year; and on failing to do so shall be liable to an action on his official bond for his default in such sum as will cover such default, such action to be brought to the next ensuing term of the superior court in the name of the state upon the relation of the board of county commissioners. The sheriff shall furnish to the county board of education at the time of his settlement with the county treasurer as provided in this section a complete itemized copy of such settlement, which shall contain a list of all insolvent polls, releases, errors, and rebates allowed him by the county board of commissioners. In making settlement with the treasurer, the sheriff or tax collector shall make separate account of insolvents and delinquents allowed, whether on property or

capitation tax. The county superintendent shall make copies of the fines and penalties reported by justices of the peace and reported to the clerk of superior court and file the same with the county board.

Rev., s. 4111; Code, s. 723; 1901, c. 4, s. 54; 1905, c. 533, s. 20; 1919, c. 254, s. 3.

The sheriff is required to pay over the school fund, less his commissions, to the treasurer; and the county commissioners cannot charge any of the expense of making out the tax lists against the school fund: Board of Education v. Comrs., 167-114.

5501. Fiscal school year. The fiscal school year shall begin on the first day of July and close on the thirtieth day of June next succeeding.

Rev., s. 4118; 1901, c. 4, s. 67.

ART. 13. FEDERAL AND STATE COÖPERATION

5502. Acceptance of benefits of federal vocational education act. The state of North Carolina hereby accepts all of the provisions and benefits of an act passed by the senate and house of representatives of the United States in congress assembled, entitled, "An act to provide for the promotion of vocational education, to provide for coöperation with the states in the promotion of such education in agriculture and the trades and industries; to provide for coöperation with the states in the preparation of teachers of vocational subjects; and to appropriate money and regulate its expenditure," approved February twenty-third, nineteen hundred and seventeen.

1917, cc. 95, 270; 1919, cc. 119, s. 1, 131, s. 1.

5503. State appropriation equal to federal appropriation. The state of North Carolina appropriates out of the state public school fund a sum of money for each fiscal year equal to the maximum sum which may be allotted to the state of North Carolina from the federal treasury, under the provisions of the Smith-Hughes Act, namely, for the fiscal year ending June thirtieth, nineteen hundred and twenty, sixty-seven thousand, four hundred and fifty-two dollars and forty-nine cents; for the fiscal year ending June thirtieth, nineteen hundred and twenty-one, eighty-one thousand, three hundred and six dollars and eighteen cents: Provided, that none of this state appropriation shall be used to match federal funds in schools of less than college grade receiving other state funds for the promotion of the teaching of vocational subjects: Provided further, that only such portion of above state appropriation shall be used as may be absolutely necessary to carry on the work outlined in section 5394 and to meet the federal requirements.

1919, cc. 102, s. 13, 119, s. 7, 131, s. 7.

5504. State treasurer authorized to receive and disburse vocational education fund. The state treasurer is hereby designated and appointed custodian of all moneys received by the state from the appropriation made by said act of congress, and he is authorized to receive and to provide for the proper custody of the same, and to make disbursement thereof in the manner provided in the said act and for the purpose therein specified. He shall also pay out moneys appropriated by the state of North Carolina for the purpose of carrying out the provisions of article 4 of this chapter upon the order of the state board for vocational education.

1919, cc. 119, s. 2, 131, s. 2.

ART. 14. SPECIAL COUNTY SCHOOL TAX

5505. Election upon petition of county board of education. Upon the petition of the county board of education of any county the county commissioners may order an election to be held in the county to ascertain the will of the people whether there shall be levied on all taxable property and polls in the county a special tax, not to exceed thirty cents on the one hundred dollars valuation of property and ninety cents on each poll, to supplement the county school fund of the county.

1911, c. 71, s. 1.

The establishment and support of schools is not a necessary expense for a county or municipal corporation, and therefore a special tax or a bond issue for that purpose must be approved by a majority of the qualified voters at an election held for that purpose: *Hill v. Lenoir County*, 176-572; *Williams v. Comrs.*, 176-554; *Snider v. Jackson County*, 175-590; *Stephens v. Charlotte*, 172-564; *Moran v. Comrs.*, 168-289; *Sprague v. Comrs.*, 165-603; *Gastonia v. Bank*, 165-507; *Ellis v. Trustees*, 156-12; *Hollowell v. Borden*, 148-255; *Wharton v. Greensboro*, 146-356; *Smith v. Trustees*, 141-143; *Rodman v. Washington*, 122-39; *Goldsboro v. Broadhurst*, 109-228; *Riggsbee v. Durham*, 98-81; *Lane v. Stanly*, 65-153.

An election held in a county for this purpose, which fails in the county but carries in one township, is not valid for such township alone unless the question was submitted separately: *Hill v. Lenoir County*, 176-572.

5506. Rules governing election. The election shall be conducted for the county as nearly as may be under the same rules and regulations governing district special school-tax elections.

1911, c. 71, s. 2.

See section 5527.

5507. Levy and collection in county. In case a majority of the qualified voters at said election shall vote in favor of the tax, the same shall be annually levied and collected in the same manner and at the same time as the other taxes of the county are levied and collected.

1911, c. 71, s. 3.

5508. Reduction of special local-tax levy in district. In case a majority of the qualified voters at said election in the county shall vote in favor of the special tax the board of county commissioners shall ascertain the sentiment of the voters in any existing special-tax district as to whether or not they desire to retain all or any part of the existing special tax in any special-tax district, and the county commissioners shall reduce the annual special levy of such district by an amount not exceeding the special levy provided for the county, under this article.

1919, c. 254, s. 16.

The question of special tax in the county and in a township are two distinct propositions and should be submitted separately: *Hill v. Lenoir Co.*, 176-572. Upon a single proposition as to special tax for the county, which fails in the county but prevails in one township, to levy a tax in such township is unconstitutional: *Ibid.* (under section before amended by act of 1919.)

5509. Subsequent elections upon failure of first. In case a majority of the qualified voters at said election in any county shall fail to vote for said special tax, on petition of a majority of the members of the county board of education of the

county, the county commissioners may, after thirty days notice, order an election in any subsequent year after the first election for the same purpose and under the same regulations as the first election herein provided for in any or all of the townships of the county that shall have failed to carry said special tax in the former election.

1911, c. 71, s. 6.

5510. Payment of election expenses. The expense of holding said election shall be paid out of the county school fund of the county.

1911, c. 71, s. 7.

ART. 15. SPECIAL HIGH SCHOOL TOWNSHIP TAX

5511. Election upon petition of freeholders. In any township, upon petition of one-fourth of the freeholders of the township, approved by the county board of education, the board of county commissioners, after thirty days notice at the courthouse door and three public places in the township, shall hold an election to ascertain the will of the people within the township whether there shall be levied in said township a special annual tax of not less than ten cents nor more than thirty cents on the one hundred dollars valuation of property, and not less than thirty cents nor more than ninety cents on each poll, in addition to all other taxes levied for all other purposes, to be used for the establishment of a central high school or high schools in said township, in case such special tax is voted.

Rev., s. 4113; 1905, c. 533, s. 13.

See *Smith v. School Trustees*, 141-143, and cases cited under section 5505. As to who are "freeholders," see section 5526.

5512. Rules governing election; tickets. The board of county commissioners shall appoint a registrar and order a new registration for said township, and the election shall be held under the law governing general elections, as nearly as may be, and the expenses of such election shall be paid out of the general county school fund. At said election those who are in favor of the levy and collection of said tax shall vote a ticket on which shall be printed or written the words "For High School Tax," and those who are opposed shall vote a ticket on which shall be printed or written the words "Against High School Tax."

Rev., s. 4113; 1905, c. 533, s. 13.

5513. Levy and collection. In case a majority of the qualified voters at said election are in favor of said tax, then so much of the tax on property and polls herein provided for as in the judgment of the committee may be necessary shall be annually levied and collected in the manner prescribed for the levy and collection of other taxes.

Rev., s. 4113; 1905, c. 533, s. 13.

5514. Money to be expended by high school committee. All moneys levied under the provisions of this article shall, upon collection, be placed by the treasurer of the county school fund to the credit of the township high school committee, composed of three members, appointed by the county board of education, and shall be expended exclusively by said committee in establishing and maintaining

one or more high schools in said township, under such rules and regulations as to its conduct and such course or courses of study as shall be prescribed by the state superintendent of public instruction.

Rev., s. 4113; 1905, c. 533, s. 13.

5515. Powers, duties, and qualifications of committee. The powers, duties, and qualifications of the committeemen provided for in the preceding section shall be similar to those of other school committeemen, and they shall have the same power to apportion the funds so raised as is conferred upon the county board of education for apportionment of the general fund among the schools of the township.

Rev., s. 4113; 1905, c. 533, s. 13.

5516. School may be established without special tax. Township high schools may be established without the levying of a special township high school tax where the public funds are sufficient for that purpose, under such rules and regulations as to organization and course of study as the state superintendent of public instruction may prescribe.

Rev., s. 4113; 1905, c. 533, s. 13.

5517. Elementary branches may be taught; other funds may be apportioned. The provisions of this article shall not be so construed as to prevent the teaching of the elementary branches in such high schools as may be established, nor so construed as to prevent the county board of education from making such apportionment of public school funds to such high schools as they may deem equitable and just.

Rev., s. 4113; 1905, c. 533, s. 13.

5518. High school subjects may be taught in public schools. High school subjects may be taught in all public schools employing more than one teacher, according to such rules and regulations as to organization and course of study as shall be prescribed by the state superintendent of public instruction, where the public funds are sufficient to provide for such teaching; but the high school branches taught in such schools shall not interfere with the thorough teaching of the elementary branches.

Rev., s. 4113; 1905, c. 533, s. 13.

ART. 16. SPECIAL CITY OR TOWN TAX

5519. Election upon petition of freeholders. In every incorporated city or town in which there is not now levied a special tax for schools, upon a petition signed by one-fourth of the freeholders therein, the board of aldermen or town commissioners of such city or town shall, at the date of the municipal or general election next ensuing, upon the presentation of the petition, order an election to be held to ascertain the will of the people whether there shall be levied in such city or town a special annual tax of not more than thirty cents on the one hundred dollars valuation of property and ninety cents on the poll to supplement the public school fund in such city or town.

Rev., s. 4114; 1901, c. 4, s. 71.

As to who are "freeholders," see section 5526. As to necessity for election, see cases cited under section 5505.

5520. Rules governing election; tickets. The election shall be held in the different election precincts or wards under the law governing municipal or general elections in such cities or towns. At the election those who are in favor of the levy and collection of the tax shall vote a ticket on which shall be printed or written the words "For Special Tax," and those who are opposed shall vote a ticket on which shall be printed or written the words "Against Special Tax."

Rev., s. 4114; 1901, c. 4, s. 71.

5521. Levy and collection. In case a majority of the qualified voters at the election is in favor of the tax, the same shall be annually levied and collected in such city or town in the manner prescribed for the levy and collection of other city or town taxes.

Rev., s. 4114; 1901, c. 4, s. 71.

5522. Money to be expended by city or town school committee. All moneys levied under the provisions of this article shall, upon collection, be placed to the credit of a city or town school committee, composed of not less than five nor more than seven members, to be appointed by the board of aldermen or town commissioners for such city or town, and shall be, by such committee, expended exclusively upon the public schools in the city or town; and there shall be but one school district in the city or town, in which there may be established one or more schools for each race. The school committee shall apportion the money in such manner as in its judgment will equalize school facilities.

Rev., s. 4114; 1901, c. 4, s. 71.

ART. 17. SPECIAL TAX IN SCHOOL DISTRICTS CONTAINING CITIES OR TOWNS

5523. Election upon petition; conduct of election; result; use of power. In any graded school, public or high school district, which includes an incorporated city or town, upon the written petition of one-third of the qualified voters of the district for an election to be held upon the question of levying an additional special annual tax to an amount specified in the petition with the approval of the school trustees of the district, such election shall be ordered by the board of aldermen or other governing body of the incorporated city or town, in case the district is confined exclusively to such city or town, or by the board of county commissioners, in case the district includes also a part of the county not embraced within the city or town.

Such election shall be ordered, advertised, and held in the same manner as is now or may be hereafter provided by law for municipal or general elections where the same is entirely within the corporate limits of the city or town; but where the said election is for a district that includes, in addition, any portion of the county not within the corporate limits of the city or town, then the said election shall be ordered, advertised, and held in the same manner as is now or may be hereafter provided by law for election of members of the general assembly. At such election those who favor the levy and collection of said tax shall vote a ballot on which shall be written or printed the words "For Special School Tax," and those who are opposed shall vote a ballot on which shall be written or printed the words "Against Special School Tax."

It shall be the duty of the governing authorities of the city or town where the election is held entirely within the corporate limits of the city or town, but it shall be the duty of the county commissioners where the district in which the election is held includes any part of the county not within the corporate limits of the city or town, to declare the result of said election. If the majority of the qualified voters at said election shall vote in favor of said tax, the same shall be annually levied and collected in the manner prescribed for the levy and collection of other taxes. All money levied and collected under the provisions of this section shall be placed to the credit of the board of trustees of said schools, to be by them expended exclusively for the maintenance of the said schools within the tax district in which the said election is held.

1917, c. 102, s. 1.

See cases cited under section 5505.

5524. Time of elections and levy; frequency of elections. All elections ordered under the provisions of this article shall be ordered and held within sixty days after the filing of the petition mentioned in the preceding section with the board of commissioners or other governing body of said city, town, or county, or with the clerk or secretary of such board or body; and if any such election shall be held prior to the first day of June of any year, the tax authorized by such election shall be levied and collected for the current year; but if such election shall be held after the first day of June of any year, the tax authorized by such election shall not be levied and collected until the following year. Elections under the provisions of this article shall be held not oftener than once a year.

1917, c. 102, ss. 2, 6.

5525. Limit of aggregate tax rate. The aggregate of all school taxes annually levied and collected under the provisions of this article, and of any other law, general or special, enacted prior to March 1st, 1917 (other than taxes levied and collected for the purpose of paying the interest or principal of public, graded, or high school bonds), shall not exceed one dollar on the one hundred dollars worth of property.

1917, c. 102, s. 3.

ART. 18. SPECIAL TAX IN SPECIAL SCHOOL DISTRICTS

5526. Election for special-tax districts on petition of freeholders. Special school tax districts may be formed by the county board of education in any county without regard to township lines under the following conditions: Upon a petition of one-fourth of the freeholders within the proposed special school district, in whose names real estate in such district is listed in the tax lists of the current fiscal year, endorsed by the county board of education, the board of county commissioners, after thirty days notice at the courthouse door and three public places in the proposed district, shall hold an election to ascertain the will of the people within the proposed special school district whether there shall be levied in such district a special annual tax of not more than thirty cents on the one hundred dollars valuation of property and ninety cents on the poll to supplement the public school fund which may be apportioned to such district by the county board of education in case such special tax is voted.

Rev., s. 4115; 1909, c. 525, s. 4.

The requirements for this proceeding are (a) petition by one-fourth of the freeholders in the proposed district; (b) endorsement by the county board of education; (c) holding an election; (d) vote of a majority of the qualified voters in favor of it: *Howell v. Howell*, 151-575; *Gill v. Comrs.*, 160-177. The term "freeholders" was held not to include women: *Gill v. Comrs.*, 160-177; but this was changed by act of 1915, c. 22 (section 1746): *Chitty v. Parker*, 172-126. A change in the boundaries of the district after the petition is filed will make the proceeding void, unless assented to by the signers: *Chitty v. Parker*, 172-126. The validity of the proceeding may be tested by a direct proceeding for that purpose: *Gill v. Comrs.*, 160-177. The presumption is in favor of the regularity of the proceedings: *Thrash v. Comrs.*, 150-693.

5527. Rules governing election; tickets. The board of county commissioners shall appoint a registrar and two pollholders, and shall designate a polling place and order a new registration for such district. The election shall be held in the district under the law governing general elections, as near as may be. The registrar and pollholders shall canvass the vote cast and declare the result, and shall duly certify the returns to the board of county commissioners, and the same shall be recorded in the records of the board of county commissioners. The expense of holding the election shall be paid out of the general school fund of the county. At the election those who are in favor of the levy and collection of the tax shall vote a ticket on which shall be printed or written the words "For Special Tax," and those who are opposed shall vote a ticket on which shall be printed or written the words "Against Special Tax."

Rev., s. 4115; 1907, c. 835, s. 1(f).

The qualification of voters is the same as in other elections; and a majority of the qualified voters must vote in favor of the district: *Williams v. Comrs.*, 176-554; *Gill v. Comrs.*, 160-177; *Howell v. Howell*, 151-575.

5528. Levy and collection. In case a majority of the qualified voters at the election is in favor of the tax, the same shall be annually levied and collected in the manner prescribed for the levy and collection of other taxes.

Rev., s. 4115.

The poll tax under this section is not limited to \$2: *Perry v. Comrs.*, 148-521.

5529. Special districts from portions of contiguous counties. Special-tax districts may be formed as provided in this article out of portions of contiguous counties. The petition for such a district must be endorsed by the boards of education of both counties. The registrar and one pollholder shall be appointed by the board of commissioners of the county in which the larger number of petitioners reside, and one pollholder must be appointed by the board of commissioners of the other county. All the provisions of article 10 in regard to districts in contiguous counties shall be applicable as far as may be to the establishment of special-tax districts out of portions of contiguous counties herein provided.

Rev., s. 4115; 1915, c. 236, s. 1(b).

Creation of special-tax district in portions of different counties: *Marsh v. Early*, 169-465.

5530. Enlargement of special district upon election. Upon a written request of a majority of the committee or trustees of any special-tax district, the county board of education may enlarge the boundaries of any special-tax district established under this article, or by special act or charter of the general assembly, so

as to include any contiguous territory, and an election in such new territory may be ordered and held in the same manner as prescribed in this article for elections in special-tax districts. In case a majority of the qualified voters in such new territory shall vote at the election in favor of a special tax of the same rate as that voted and levied in the special-tax district to which the territory is contiguous, then the new territory shall be added to and become a part of the special-tax district, and the term "special tax of the same rate" herein used shall include, in addition to the usual special tax, any tax levied to meet the interest and sinking fund of any bonds theretofore issued by the district proposed to be enlarged. In case a majority of the qualified voters at the election shall vote against the tax, the district shall not be enlarged.

Rev., s. 4115; 1907, c. 835, s. 1(f); 1919, c. 254, s. 19.

See *Marsh v. Early*, 169-465.

5531. Abolition of district upon election. Upon petition of two-thirds of the qualified voters residing in any special-tax district established under this article, the same shall be endorsed and approved by the county board of education, and the board of county commissioners shall order another election in the district for submitting the question of revoking the tax and abolishing the district, to be held under the provisions prescribed in this article for holding other elections. It shall be the duty of the board of education to endorse the petition when presented, containing the proper number of names of qualified voters, and this provision is made mandatory, and the board is allowed no discretion to refuse to endorse the same when so presented. If at the election a majority of the qualified voters in the district shall vote "Against Special Tax," the tax shall be deemed revoked and shall not be levied, and the district shall be discontinued.

Rev., s. 4115; 1909, c. 525, s. 4; 1911, c. 135, s. 1(i); 1917, c. 188, s. 1.

The requirement that the board of education should "endorse and approve" the petition for election under this section was held to be an act requiring the exercise of discretion and not enforced by mandamus: *Key v. Bd. of Education*, 170-123. (Changed by act of 1917, c. 188.)

5532. Special district in debt may not be abolished. The provisions of this article as to abolishing special-tax districts shall not apply when such special-tax district is in debt in any sum whatever.

Rev., s. 4115; 1917, c. 188, s. 1.

Where a special tax has been levied, a subsequent change or revocation of the district will not prevent the collection of such tax: *Mann v. Allen*, 171-219; *Marsh v. Early*, 169-462 (before act of 1917, c. 188).

5533. Election for abolition not oftener than once in two years. No election for revoking a special tax in any special-tax district shall be ordered and held in the district within less than two years from the date of the election at which the tax was voted and the district established, nor at any time within less than two years after the date of the last election on the question in the district; and no petition revoking such tax shall be approved by the county board of education oftener than once in two years.

Rev., s. 4115; 1911, c. 135, s. 1(i).

5534. Special tax levy restored at any time in abolished district. The provisions for ordering a new election to revoke a special tax in any special-tax dis-

trict shall not apply to elections in such districts for increasing or restoring the special-tax levy in such district, which elections may be ordered and held at any time in accordance with the provisions of this article for establishing new special-tax districts.

Rev., s. 4115; 1909, c. 525, s. 4.

5535. Increasing levy in special district, where inadequate. When it shall be ascertained upon the written petition of one-third of the qualified voters of the special-tax district, endorsed by the county board of education, that the special tax levied under this article will be inadequate to maintain and support the school or schools of the special-tax district, then it shall be competent to hold an election in the district to increase the special-tax levy upon real and personal property and polls to an amount not exceeding fifty cents on the one hundred dollars valuation of property and one dollar and fifty cents on the poll. This election shall be called and held in the same manner as the election for creating the special-tax district as provided in this article; but no election shall be held oftener than once in two years.

Rev., s. 4115; 1917, c. 102, s. 5; 1919, cc. 64, 254, s. 11.

5536. Money to be expended by school committee. All money levied under the provisions of this article shall, upon collection, be placed to the credit of the school committee in the district, which committee shall be appointed by the county board of education; and such school committee shall apportion the money among the schools in the district in such manner as in its judgment will equalize school facilities.

Rev., s. 4115.

For special authority to issue bonds, see *Hood v. Sutton*, 175-98; *Bd. of Ed. v. Comrs.*, 174-47; *Gregg v. Comrs.*, 162-479.

SUBCHAPTER IV. PUBLIC SCHOOL SYSTEM AND INSTRUCTION

ART. 19. GENERAL SCHOOL SYSTEM

5537. Constitutional provisions. The people have the right to the privilege of education, and it shall be the duty of the state to guard and maintain that right; and religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The general assembly shall provide by taxation and otherwise for a general and uniform system of public schools, wherein tuition shall be free of charge to all children of the state between the ages of six and twenty-one years; and the general assembly is empowered to enact that every child of sufficient mental and physical ability shall attend the public schools, during the period between the ages of six and eighteen years, for a term of not less than sixteen months, unless educated by other means.

Rev., s. 4085; Const., Art. I, s. 27; Art. IX, ss. 1, 2, 15.

See annotations to constitution.

5538. Separation of races. The children of the white race and the children of the colored race shall be taught in separate public schools, but there shall be no discrimination in favor of or to the prejudice of either race. All white children

shall be taught in the public schools provided for the white race, and all colored children shall be taught in the public schools provided for the colored race; but no child with negro blood, or what is generally known as Croatan Indian blood, in his veins, however remote the strain, shall attend a school for the white race, and no such child shall be considered a white child. The descendants of the Croatan Indians now living in Robeson, Sampson, and Richmond counties shall have separate schools for their children, as hereinafter provided in this chapter.

Rev., s. 4086; Const., Art. IX, s. 2; 1901, c. 4, s. 68; 1903, c. 435, s. 22; 1915, c. 236, s. 1.

It is constitutional for the legislature to enact that no child with negro blood in his veins, "however remote the strain," shall attend a school for the white race: *Medlin v. Board of Education*, 167-239; *Johnson v. Board of Education*, 166-468; *Ferrall v. Ferrall*, 153-174. See, also, *Hare v. Board of Education*, 113-9 (decided before the act of 1915).

There must be no discrimination in the division of the school fund or school advantages on account of race: *Williams v. Bradford*, 158-36; *Bonitz v. School Trustees*, 154-375; *State v. Wolf*, 145-441; *Lowery v. School Trustees*, 140-39; *Hooker v. Greenville*, 130-475; *Markham v. Manning*, 96-132; *Puitt v. Comrs.*, 94-709; *Riggsbee v. Durham*, 94-800.

It is not discriminating to divide the races when advantages are equal: *Puitt v. Comrs.*, 94-709; *McMillan v. School Committee*, 107-609; see, also, *Britton v. R. R.*, 88-536; *State v. Steele*, 106-782; *Whitford v. Comrs.*, 159-160.

5539. Women on school boards. Positions on committees for rural and graded schools, boards of trustees of state schools and colleges for women, and subtext-book commissions shall not be deemed offices within this state, but shall be places of profit or trust; and women shall be eligible to serve in such positions under the same conditions and restrictions as are now imposed upon men. The provisions of this section shall not apply to any position or place where the person holding such position or place is elected by the people.

1913, c. 170.

5540. Closing schools for nonattendance. When a monthly or weekly report of any school where the district does not contain over one hundred and fifty children shows an average daily attendance of less than one-fifth of the school census, the committee may, with the approval of the county superintendent of schools, order the school to be closed, and the money due such school shall remain to the credit of that school; but all funds remaining to the credit of such school at the close of the school year, unused, because of nonattendance, shall be returned to the general fund for reapportionment, unless such nonattendance shall have been caused by providential or other unavoidable causes; and the county board of education, upon the recommendation of the county superintendent, shall have authority to close any school for either race in any township before it shall have continued for the average length of school term for the township in case the attendance does not justify the continuance of the school, and the money remaining to the credit of such district thus closed for nonattendance shall be returned to the general school fund.

Rev., s. 4164.

The court will not interfere with the exercise of discretion of the trustees of a graded school as to the opening and management of the school: *Dula v. School Trustees*, 177-426.

5541. Branches taught. The branches to be taught in all the public schools shall be spelling, reading, writing, arithmetic, drawing, language lessons and composition, English grammar, geography, the history of North Carolina and the United States, elements of agriculture, and oral and text-book instruction in

elementary physiology and hygiene, including the nature and effect of alcoholic drinks and narcotics: Provided, that in public schools employing more than one teacher the elements of civil government, containing the constitution of North Carolina and the United States, and such other subjects of study as the state board of education may direct, shall be taught after adequate provision shall have first been made for the thorough teaching of the branches before named.

1919, c. 254, s. 2.

5542. Fire prevention to be taught. It shall be the duty of the insurance commissioner and the superintendent of public instruction to provide as far as practicable for the teaching of "Fire Prevention" in the colleges and schools of the state, and to arrange, if possible, for a text-book adapted to such use.

1915, c. 166, s. 5.

NOTE.—As to fire prevention and "Fire Prevention Day," see chapter Fire Protection, art. 1.

NOTE.—Section 5698 of this chapter contains list of subjects of text-books to be taught in schools.

For provisions regulating teaching of elementary branches in high schools, and high school subjects in public schools, see this chapter, secs. 5517, 5518.

ART. 20. ARBOR DAY

5543. Arbor day designated. The Friday following the first day of November in each year shall be known as Arbor Day, to be appropriately observed by the public schools of the state.

1915, c. 51, s. 1.

5544. Governor to make proclamation for observance by schools. The governor is herewith authorized to make proclamation setting forth the provisions of this article and recommending that arbor day be appropriately observed by the school children of the state, in order that they may be brought up to appreciate the true value of trees and forests to their state.

1915, c. 51, s. 2.

5545. State superintendent to provide for observance. It shall be the duty of the state superintendent of public instruction to take the matter of the observance of arbor day by the public schools of the state under his general supervision, to issue each year a program for its observance to cover such part of the day as he may prescribe, and to transmit suitable instructions to the county school authorities under his charge for an appropriate observance of arbor day.

1915, c. 51, s. 3.

ART. 21. SEPARATE SCHOOLS FOR INDIANS IN CERTAIN COUNTIES

5546. Indians subject to article designated. The persons residing in Robeson, Richmond, and Sampson counties, supposed to be descendants of a friendly tribe once residing in the eastern portion of the state, known as Croatan Indians, and who have heretofore been known as "Croatan Indians" or "Indians of Robeson County," and their descendants, shall be known and designated as the "Cherokee Indians of Robeson County"; and the persons residing in Person county sup-

posed to be descendants of a friendly tribe of Indians and White's Lost Colony, once residing in the eastern portion of this state, and known as "Cubans," and their descendants, shall be known and designated as the "Indians of Person County."

Rev., s. 4168; 1885, c. 51, s. 2; 1911, c. 215; P. L. 1911, c. 263; 1913, c. 123; P. L. 1913, c. 22.

NOTE.—For separate schools for Indians in Scotland county, see 1909, c. 720. For separate schools in Cumberland county, see 1907, c. 499.

See *Goins v. Indian Training School*, 169-736. See, also, sections 6257-6259.

5547. To have separate schools. The Indians mentioned above and their descendants shall have separate schools for their children, school committees of their own race and color, and shall be allowed to select teachers of their own choice, subject to the same rules and regulations as are applicable to all teachers in the general school law, and there shall be excluded from such separate schools all children of the negro race to the fourth generation.

Rev., s. 4168; 1885, c. 51, s. 2; 1889, c. 60, s. 1; 1911, c. 215.

Acts providing separate schools for Croatan Indians are constitutional: *McMillan v. School Com.*, 107-609. Legislature can classify pupils according to race: *Ibid.*—but must give members of all races equal school advantages: *Ibid.*; *Puitt v. Comrs.*, 94-709; *State v. Steele*, 106-782; *Britton v. R. R.*, 88-536. As to meaning of word "generation," see *McMillan v. School Com.*, 107-609; *Hare v. Bd. of Ed.*, 113-9. As to mandamus to compel admission into school for other race, see *Hare v. Bd. of Ed.*, 113-9, and cases cited. These schools are not restricted to those resident in the county where the school is established, but are open to all who come within their limits: *Goins v. Indian Training School*, 169-736.

5548. Duty of county board. It shall be the duty of the county board of education to see the provisions of this article carried into effect, and the board shall for that purpose have the census taken of all the children of such Indians and their descendants between the ages of six and twenty-one, and proceed to establish such suitable school districts as shall be necessary for their convenience, and take all such other and further steps as may be necessary for the purpose of carrying this article into effect.

Rev., s. 4169; 1885, c. 51, ss. 3, 4.

5549. Right to attend school in other districts. Where any children, descendants of such Indians, reside in any district in the counties mentioned in this article in which there are no separate schools provided for their race, they shall have the right to attend any of the public schools in the county provided for their race, and their share of the public school fund shall be appropriated to their education upon the certificate of the school committee in the district in which they reside, stating that they are entitled to attend such public schools.

Rev., s. 4169; 1885, c. 51, ss. 3, 4; P. L. 1911, c. 263; P. L. 1913, c. 22.

5550. Pro rata share of school fund kept separate. The treasurer of the county school fund and other proper authorities whose duties are to collect, keep, and apportion the school fund shall procure from the county board of education the number of children in the county between the ages of six and twenty-one, belonging to such Indian race, and shall set apart and keep separate their pro rata share of the school funds, which shall be paid out under the same rules in every respect as are provided in the general school law and in the preceding sections.

Rev., s. 4170; 1885, c. 51, s. 4.

5551. Application of general school law. The general public school law shall be applicable in all respects to such separate schools for the Indians mentioned in this article, except where such general law is repugnant to these special provisions relating to such schools; and these special provisions for such separate schools shall apply only to the counties of Robeson, Richmond, Sampson, and Person.

Rev., s. 4171; 1885, c. 51, s. 5; 1911, c. 215; P. L. 1911, c. 263; 1913, c. 123.

ART. 22. INSTRUCTION IN TEMPERANCE

5552. Minimum of instruction; how and when given. In addition to the branches in which instruction is now required by law to be given in all schools supported wholly or in part by public money, instruction shall also be given as to the nature of alcoholic drinks and other narcotics and their effect upon the human system, in connection with the various divisions of physiology and hygiene. Such subject shall be taught in each school year below the second year in the high schools, and shall be taught as thoroughly as arithmetic and geography are taught in said schools. Such instruction shall be given by the use of text-books in the hands of all pupils in all grades from the fourth grade to the first year in the high school, inclusive, or in corresponding classes in graded schools, and orally to all pupils in the first three or primary grades, by teachers using text-books adapted to such oral instruction as a guide and standard; and all pupils must pass such tests as may be required in other studies before promoting to the next succeeding year's work. The minimum amount of such instruction shall be two lessons each week for ten weeks, or the equivalent of the same, in schools employing one teacher, and three lessons each week for ten weeks, or the equivalent of the same, in schools employing two or more teachers. Such instruction shall be given as aforesaid to all pupils in all public schools of the state.

1907, c. 957, s. 1.

5553. Gradations and regulations as to text-books. The text-books used for the instruction required to be given by the preceding section shall be graded to the capacities of the pupils, and for students below high-school grade such text-books shall give at least one-fifth their space, and for students of fifth school grade they shall give not less than twenty pages to the nature and effect of alcoholic drinks and other narcotics; but no book in which the required amount of this subject shall appear, in whole or in part, as a separate chapter at the end of the book, shall be considered as complying with the requirements of this statute, and no topical outline of study for the guidance of teachers which reduces the amount of temperance instruction below that which is required by the text-books provided for in this article shall be considered as complying with the intent of the law. No text-book on physiology or hygiene not conforming to this article shall be used in the public schools except so long as may be necessary to fulfill the conditions of any legal adoption existing on the eleventh day of March, nineteen hundred and seven.

1907, c. 957, s. 2.

5554. Training of teachers for this instruction. In all normal schools, teachers' training classes, teachers' institutes, teachers' associations, summer schools, and all other organizations for the equipment of teachers, adequate time and atten-

tion shall be given to instruction in the best methods of teaching physiology and hygiene, with special reference to the nature of alcoholic drinks and other narcotics; and no teacher shall be licensed who has not passed a satisfactory examination in this subject and the best method of teaching it.

1907, c. 957, s. 3.

5555. Enforcement of temperance instruction. It shall be the duty of the proper officer in control of any school or schools described in the first and third sections of this article to enforce the provisions of this article; and any such officer, school director, committee, superintendent, or teacher who shall refuse or neglect to comply with the requirements of this article, or shall neglect or fail to make proper provision for the instruction required and in the manner specified for all pupils in each and every school under his control and supervision, shall be removed from office and the vacancy filled as in other cases; and if it be satisfactorily proved that trustees or boards of education or boards of educational institutions receiving money from the state have failed to enforce this article, as far as they have authority, it shall be deemed sufficient cause for withholding the warrant for the state appropriation of school money to which such district or educational institution would otherwise be entitled.

1907, c. 957, s. 4.

**ART. 23. INSTRUCTION IN AGRICULTURE, MANUAL TRAINING,
AND HOME ECONOMICS**

5556. State superintendent to prepare courses and publish bulletins. The state superintendent of public instruction shall prepare or have prepared courses of study in agriculture, manual training, and home economics for use in public schools of the state, and shall have the same printed in bulletin form, said bulletins to be used as supplementary texts and guides in teaching these subjects in all public schools.

These bulletins shall contain courses of study and readily usable outlines in agriculture, including crop production and management, gardening and fruit growing, livestock farming including simple lessons in home dairying and poultry raising, manual training and home economics, and any other subjects which may be considered necessary in the teaching of the above named courses.

1919, c. 255, s. 1.

5557. Bulletins furnished without cost. The bulletins provided for in this article shall be published by the state board of education and printed by the state printer, as state printing, and shall be furnished to the teachers and public school children of the state, without cost. These bulletins shall be distributed from the office of the state superintendent of public instruction as are other publications of the department.

1919, c. 255, s. 6.

5558. Time given to subjects for different classes of schools. The state superintendent of public instruction shall fix the minimum time to be given to the teaching of agriculture, manual training, and home economics in the respective grades, having in mind in the preparing of these regulations the conditions ex-

isting in the one-teacher school, the two-teacher school, and three-teacher school, and all of the regularly organized schools as distinctive types for which this material is to be provided.

1919, c. 255, s. 3.

5559. School credits for outside work. For the purpose of encouraging the practical application of the principles taught in the classroom, the state superintendent of public instruction shall prepare a system of credits, whereby the boys and girls shall receive credit for work done outside of the school hours, upon the farm and in the home, in conformity with the present system of credits obtaining in our public schools.

1919, c. 255, s. 2.

5560. Lands for demonstration work. The board of education of any county, or the board of control in any school of the state, may secure by donation, purchase, condemnation proceedings, or through lease, one or more acres of land adjacent to or near any school site for the purpose of conducting practical demonstrations of the principles taught in the classroom.

1919, c. 255, s. 5.

5561. Examination and training of teachers. All teachers of the state offering to teach any grade in which the subjects herein specified are required in any of the rural schools shall pass an examination on the subjects of agriculture, manual training, and home economics, in so far as the teaching of these subjects applies to their respective grades, and upon the bulletins provided for in this article, but this requirement does not apply to teachers entering the profession prior to July first, one thousand nine hundred and nineteen. Furthermore, the bulletins herein provided for shall be made a part of the course of study in agriculture, manual training, and home economics in summer schools for teachers, conducted by the various state institutions and in other courses for the improvement of teachers.

1919, c. 255, ss. 7, 8.

5562. All teachers may be examined. Every county superintendent in the state, together with state board of examiners and institute conductors, is hereby empowered to require satisfactory evidence, by examination or otherwise, of the ability of every teacher in the respective counties to teach the subject-matter contained in the bulletins herein provided for.

1919, c. 255, s. 9.

5563. All schools required to give courses. Every public school in the state, unless exempted by the following section, shall be required to give courses in agriculture, manual training, and home economics, as prescribed herein, to its students.

1919, c. 255, s. 10.

5564. Town schools exempted. Schools operating in towns of a population of two thousand or more may be exempt from the provisions of this article by per-

mission granted such schools by their local boards: Provided, that courses of study in home gardening, school gardening, manual training, and home economics, suited to the needs of such schools, shall be prepared.

1919, c. 255, s. 4.

5565. Reports by county superintendents. Every county superintendent of public instruction shall report to the state superintendent of public instruction, within sixty days after the beginning of the school term in his county, as to whether or not such courses as are provided for herein are being taught.

1919, c. 255, s. 11.

ART. 24. COUNTY FARM-LIFE SCHOOLS

5566. Establishment of school in county. There shall be established and maintained in every county complying with the provisions of this article, as hereinafter set forth, a school to be known as a "County Farm-life School," for the training and preparation of the boys and girls of the county for farm life and home-making.

1911, c. 84, s. 1.

5567. Aim of school and course of study. The aim of said school shall be to prepare boys for agricultural pursuits and farm life and to prepare girls for home-making and housekeeping on the farm. The course of study shall include practical work on the farm by the boys and practical work in all subjects relating to housekeeping and home-making by the girls. The course of study in said school shall be subject to the approval of the state board for vocational education.

1911, c. 84, s. 2; 1919, c. 257, s. 1.

5568. Board of trustees; appointment; terms; vacancies. The school shall be under the control and management of a board of trustees of practical farmers, consisting of one member from each township in the county, appointed by the county board of education, who shall serve until their successors shall be appointed. The first board of trustees shall be divided by the county board of education into three as nearly equal groups as possible. One group shall be appointed for a term of two years, one group for a term of four years, and one group for a term of six years. Upon the expiration of the term of office of any trustee his successor shall be appointed for a term of six years. The county superintendent of public instruction shall be ex officio a member of said board and secretary thereof. All vacancies occurring by death, resignation, or otherwise in said board shall be filled for the unexpired term by the county board of education.

1911, c. 84, s. 3.

5569. Qualification and organization of board. Within ten days after any county, township, or townships shall have complied with the provisions of this article, as hereinafter set forth, for the maintenance and equipment of the school, the members of the board of trustees shall be appointed, and the county superintendent shall duly notify them to meet at the county-seat within ten days after their appointment to qualify and organize.

1911, c. 84, s. 4.

5570. Location of school. After due advertisement, inviting bids for the location of said school within the county, the board of trustees shall locate it at such place in said county as shall offer the largest financial aid for maintenance and equipment, having due regard for desirability and suitability of location: Provided, however, that said school shall not be located in any city or town of more than one thousand inhabitants, nor within two miles of the corporate limits of any city or town of more than five thousand inhabitants.

1911, c. 84, s. 5.

5571. Buildings, farm, maintenance. For the maintenance of said school, the county or township or school district, or all combined, wherein it is located, shall provide annually, by taxation or otherwise, not less than twenty-five hundred dollars. The county or township or school district, or all combined, shall provide by bond issue, or otherwise, the following equipment for said school: a school building with recitation rooms and laboratories and apparatus necessary for efficient instruction in the prescribed subjects of study; dormitory buildings with suitable accommodations for not less than twenty-five boys and twenty-five girls; a barn and dairy building with necessary equipment; a farm of not less than fifty acres of good arable land. All of said buildings shall be located on said farm and shall be constructed in accordance with plans approved by the state superintendent of public instruction, and the entire equipment shall be subject to his approval and acceptance after inspection.

1911, c. 84, s. 6; 1919, c. 257, s. 3.

Since the schools are not a necessary expense for county, a farm-life school cannot be maintained by tax or bonds without the approval of a majority of the qualified voters: *Snider v. Jackson County*, 175-590. The establishment of such school contemplates equal advantages for both races: *Whitford v. Comrs.*, 159-160. Such school may be established by special act: *Moran v. Comrs.*, 168-289.

5572. Authority to accept erected school building. Upon the recommendation of the board of trustees and the presentation of satisfactory reasons therefor, the state superintendent of public instruction may grant permission to the board of trustees to accept any suitable and properly equipped school building already constructed, though it may not be located on the farm, provided it be located within reasonable and convenient distance thereof.

1911, c. 84, s. 6; 1919, c. 257, s. 4.

5573. Election in county to establish schools. 1. Upon written request of the county board of education of any county, the board of county commissioners of said county may in their discretion order an election to be held in said county, in accordance with the law governing general elections therein, as nearly as may be. A new registration shall be ordered for said election; and not less than thirty days notice of said election shall be given at the courthouse door and three other public places in the county; and if there be newspapers published in the county, a notice of said election shall also be published weekly for four successive weeks preceding said election in one newspaper therein; and the registrars and pollholders shall canvass the vote cast, declare the result, and duly certify the returns to the board of county commissioners, and the returns shall be recorded in the records of said board of county commissioners.

2. At said election shall be submitted to the qualified voters of the county the question of levying and collecting a special tax on all taxable property and polls of said county for the maintenance and equipment of a "County Farm-life School" therein. At such election those favoring the levying and collecting of such a tax for such purpose shall vote a ballot on which shall be written or printed the words "For County Farm-life School," and those opposed shall vote a ballot on which shall be written or printed the words "Against County Farm-life School."

3. If a majority of the qualified voters shall vote "For County Farm-life School," then all the provisions of this article shall be in full force and effect, and the county commissioners shall annually levy and cause to be collected, in the same manner and at the same time as other taxes of the county are levied and collected, a tax on all property and polls of the county sufficient to provide the sum required for the annual maintenance of said school, and, in addition, the sum required for the payment of the annual interest on such bond issue as may be found necessary for providing the equipment for the school as said interest accrues, and to create a sinking fund for the purpose of paying off and discharging said bonds as they become due. The bond of the sheriff or tax collector of said county shall be responsible for the tax to the same extent as it is liable for other taxes collected by him.

1911, c. 84, s. 7.

5574. Issuance of bonds. If a majority of the qualified voters at the election shall vote "For County Farm-life School," it shall be deemed and held that a majority of the qualified voters are in favor of granting to the board of county commissioners of said county authority to issue bonds in an amount not to exceed fifty thousand dollars for the purpose of providing the necessary equipment; and such authority shall be granted to and vested in said board of county commissioners, and said board is hereby authorized and empowered to issue and sell bonds in the name of said county to an amount not to exceed fifty thousand dollars, of such denomination and of such proportion as said board of county commissioners may deem advisable, bearing interest at a rate not to exceed six per cent, with interest coupons attached, payable at such time or times and at such place or places as they may deem advisable, such bonds to be of such form and tenor and transferable in such way, and the principal thereof payable or redeemable at such time or times, not less than fifteen years from the date thereof, and at such place or places, as the board of county commissioners may determine.

The proceeds arising from the sale of said bonds shall be expended by said board of county commissioners in providing, by purchase or otherwise, the equipment in land, buildings, and apparatus required under this article for the "County Farm-life School." The treasurer of said county shall receive no compensation for receiving or disbursing the money which may be received from the sale of said bonds.

1911, c. 84, s. 8; 1919, c. 257, s. 4.

5575. Township election to secure location. The county commissioners of any county that has voted for the establishment of a "County Farm-life School" therein shall, upon petition of one-fourth of the freeholders in any township

applying to the trustees of said "County Farm-life School" to secure the location of said school therein, order an election therein, to be held after thirty days notice at three public places in said township, under the law governing state and county elections as nearly as may be, and the returns of said election shall be certified by the registrars and poll-holders to the board of county commissioners, and the same shall be recorded in the records of said county commissioners. At the election shall be submitted to the qualified voters of said township the question of issuing bonds in a sum not to exceed fifty thousand dollars, the amount of said bond issue to be set out in the petition for said election, and of levying and collecting on all taxable property and polls in said township a special tax sufficient to provide for the payment of the interest on said township bonds as it accrues, and to create a sinking fund for the purpose of paying off and discharging said township bonds as they become due. At such election, those favoring the levying and collection of such tax for such purpose shall vote a ballot on which shall be written or printed the words "For County Farm-life School," and those opposed shall vote a ballot on which shall be written or printed the words "Against County Farm-life School."

1911, c. 84, s. 9; 1919, c. 257, s. 5.

5576. Township bonds to secure location. If a majority of the qualified voters at said election shall vote "For County Farm-life School," then it shall be deemed and held that a majority of the qualified voters are in favor of granting to the board of county commissioners of said county authority to issue bonds in the name of said township in such amount as shall have been named in the petition and notice of election, to be sold by said commissioners for the purpose of aiding in providing the buildings and farm and other equipment for "The County Farm-life School," provided said school shall be located in said township; and if said school shall be located in said township, the board of county commissioners shall annually levy and cause to be collected, in the same manner and at the same time as other taxes of the county are levied and collected, a tax on all property and polls in said township sufficient to provide for the payment of interest on said township bonds as it accrues and to create a sinking fund for the purpose of paying off and discharging said township bonds as they become due. The board of county commissioners is authorized and empowered to issue and sell said bonds of the township to the amount specified in the petition and notice of election, of such denomination and of such proportion as they may deem advisable, bearing interest at a rate not to exceed six per cent, with interest coupons attached, payable at the time or times, and at the same place or places, and of the same form and tenor, and the principal thereof payable or redeemable at the same time or times and at the same place or places as the county bonds issued by the board of county commissioners for the equipment of said "County Farm-life School."

The proceeds arising from the sale of the township bonds shall be added to the proceeds arising from the sale of the county bonds and expended therewith by the board of county commissioners in providing, by purchase or otherwise, the equipment in land, buildings, and apparatus required in this article for the "County Farm-life School."

1911, c. 84, s. 9.

5577. Election by contiguous townships to secure location. Any two or more contiguous townships bidding for the location of the "County Farm-life School" may unite and hold an election upon the same terms and conditions as are provided for one township for the location of the "County Farm-life School" at such point in said townships as may be determined by the board of trustees of said "County Farm-life School": Provided, that the amount of bonds authorized to be issued by one or more townships in order to secure the location of the "County Farm-life School" in a given township shall be deducted from the amount of bonds authorized to be issued by the county, so as to limit the total issue of bonds for farm, buildings, and equipment to fifty thousand dollars.

1911, c. 84, s. 9; 1919, c. 257, s. 5.

5578. Election in townships to establish on failure of county election. 1. In case an election shall be ordered and held in any county as herein provided, for the establishment and maintenance of a "County Farm-life School" therein, and a majority of the qualified voters at such election shall fail to vote "For County Farm-life School," any township in said county, or any two or more contiguous townships in said county, shall, upon petition of one-fourth of the freeholders therein to the board of county commissioners of the county, have an election ordered by the commissioners upon the same terms and conditions prescribed in the three preceding sections of this article: Provided, that a new registration shall be ordered.

2. If in such election a majority of the qualified voters in said township or townships shall vote "For County Farm-life School," then, in that event, it shall be deemed and held that the board of county commissioners of the county is authorized and empowered to issue and sell bonds in the name of said township or townships in an amount not to exceed twenty-five thousand dollars, and to levy and cause to be collected, in the same manner and at the same time as other taxes of the county are levied and collected, a sufficient tax on all property and polls in said township or townships to comply with all conditions named in this article for the maintenance and equipment of a "County Farm-life School," subject to the same conditions as are herein provided for the issuance and sale of county bonds and the levying and collection of a county tax for said purpose.

3. The said "County Farm-life School" shall thereupon be located at such point in said township or townships as may be determined by the board of trustees of said "County Farm-life School" provided for in this article. Such school, when thus established, shall be a "County Farm-life School" for said county, and shall be subject to all the rights, privileges, and obligations and conditions prescribed in this article for "County Farm-life Schools," except as herein otherwise provided.

1911, c. 84, s. 10.

5579. Provisions for township school becoming county farm-life school. At any time after the establishment of the "County Farm-life School" by the township or townships under the provisions of the preceding section, the county may hold an election as provided in this article for the establishment of a county farm-life school by the county; and if at the election a majority of the qualified voters of the county shall vote "For County Farm-life School," and the tax and bond

issue provided for in this article for the maintenance and equipment of a "County Farm-life School" shall be provided, as directed herein, by the county commissioners for the entire county, such school established by the township or townships shall become a county farm-life school in all respects like a county farm-life school established under this article, and the bonds of the township or townships and the tax levied for the maintenance of the school and for interest and sinking fund on the bonds shall be assumed by the entire county, and the bonds of the township or townships shall be canceled by substituting therefor county bonds as provided for a county farm-life school.

1911, c. 84, s. 10.

5580. High school department in connection with county farm-life school. There shall be established and maintained in connection with each county farm-life school such a high school course of study as may be approved by the state board for vocational education, and for the maintenance of such high school department of the county farm-life school there shall be the same county and state apportionments as are now made and required for a first-grade public high school under the provisions of subchapter III of this chapter. If said county farm-life school shall be located at the same place with some existing public high school in said county, then said public high school shall be merged into and become the high school department of said county farm-life school as an organic part thereof; and the appropriations for the maintenance thereof shall be the same as the appropriations now required for a first-grade public high school. The requirements for teachers in said high school department of the county farm-life school shall be the same as are now required for high school teachers under the high school law. Said high school department and course of study, however, and the entire management of the same shall be under the direction and control of the board of trustees and the principal of the county farm-life school, and shall be conducted as an organic part of said school.

1911, c. 84, s. 11; 1919, c. 257, s. 6.

5581. Certification of teachers. No person shall be employed as principal in charge of any county farm-life school who does not hold a high school teacher's certificate on all required subjects except Latin, Greek, and Modern Languages, and endorsed by the state board for vocational education. And no person shall be employed in the department of said "County Farm-life School" for the special training of girls for home-making and housekeeping on the farm who does not hold a high school teacher's certificate on all required subjects except Latin, Greek, and Modern Languages, and endorsed by the state board for vocational education. All teachers in farm-life schools shall be elected by the board of trustees on the recommendation of the principal of said schools, and all teachers of vocational subjects in schools receiving funds from the vocational education fund shall be approved by the state board for vocational education.

1911, c. 84, s. 12; 1919, c. 257, s. 7.

5582. Agricultural and farm-life extension and demonstration. It shall be a part of the duty of the faculty of each "County Farm-life School" to conduct agricultural farm-life extension and demonstration work in said county, in cooperation, as far as possible, with such work carried on in said county by the

state department of agriculture, the North Carolina state college of agriculture and engineering, and the United States department of agriculture; to hold township and district meetings in various parts of the county from time to time for farmers and farmers' wives; to coöperate with the county superintendent of public instruction and with the county commissioner of agriculture, where such officer exists, in stimulating, directing, and supervising practical farm-life work in the public high schools and the elementary schools of the county, and in providing instruction, through the county teachers' association and through special short courses of study at said "County Farm-life School" for the public school teachers of said county.

1911, c. 84, s. 13.

5583. Short courses for adults. There shall be provided in the courses of study of the "County Farm-life School" short courses in farm-life studies to which shall be admitted adult farmers, men and women; and there shall be held at the school annually one or more county meetings for the farmers and their wives of the county for instruction and demonstration work. All of the work herein required and all other work of the "County Farm-life School" shall be under the general supervision of the county superintendent of public instruction, and the school shall in all respects be an organic part of the county public school system.

1911, c. 84, s. 13.

5584. Admission of students from other counties. The board of trustees of the "County Farm-life School" of any county is hereby authorized and empowered to admit students from other counties of the state to said school upon payment of such rate of tuition as said board of trustees may fix; but all students who are residents of the county in which said school is located shall be admitted to said school without charge for tuition, except as otherwise provided in this article; and said board of trustees shall fix all other charges in said school at actual cost.

1911, c. 84, s. 14.

5585. Treasurer of county farm-life school; compensation. The treasurer of the county shall be the treasurer of the "County Farm-life School," and shall receive and disburse all funds therefor, keeping and rendering annually to the board of trustees of said school a separate account of such receipts and disbursements. If he be employed on salary, he shall receive no additional compensation for his services; and if employed on commission, he shall receive as compensation not to exceed one per cent on all disbursements and nothing on receipts. The official bond of said treasurer shall be responsible and held liable for all funds coming into his hands for said school to the same extent as it is liable for other funds received by him as treasurer of said county.

1911, c. 84, s. 15.

5586. Incorporation and powers. The board of trustees of said "County Farm-life School" and their successors in office shall be and are hereby constituted a body corporate by the name and style of "The Board of Trustees of the County Farm-life School of County," and by that name may sue and be sued, contract and be contracted with, purchase, hold, and sell real estate and personal property, receive donations by gift or otherwise, and exercise such other rights and privileges as are conferred by law upon corporate bodies so far as such

powers are necessary or convenient to the attainment of the objects of the school or to the performance of the duties of the board. The title to all lands and other property of the "County Farm-life School" shall vest in said board of trustees.

1911, c. 84, s. 16.

5587. Appropriation of state funds; number of schools. Upon satisfactory evidence furnished by the state board for vocational education to the state board of education that all the provisions of this article for the establishment, maintenance, and equipment of a "County Farm-life School" have been complied with in any county, the said state board of education shall order the state superintendent of public instruction to issue a requisition upon the state auditor for the sum of two thousand five hundred dollars annually for the maintenance of said school, and the state auditor shall issue his warrant in favor of the county treasurer of said county for said amount, which shall be paid out of the state treasury and the money placed to the credit of the "County Farm-life School" of said county; and sufficient moneys to pay said warrants are hereby appropriated out of the state public school fund if the amount of that fund is sufficient, after meeting all of the requirements of article 11 of this chapter, otherwise the appropriation shall be made out of the state funds not otherwise appropriated: Provided, however, that there shall not be established more than ten such schools in any one year, and that not more than one such school shall be established in any county.

1911, c. 84, s. 17; 1919, c. 257, s. 8.

The provision limiting the number of such schools to one in a county is constitutional, since it is construed to mean one for each race, or equal advantages to both races: *Whitford v. Comrs.*, 159-160.

5588. County board may supplement funds. If the funds available for the maintenance and support of any county farm-life school shall be insufficient to provide for the proper maintenance and support of said school, the county board of education of any county is hereby empowered to add to its annual budget for the maintenance and support of such school an amount not greater than one thousand dollars, provided that this amount shall not be duplicated out of the state public school fund.

1919, c. 181.

ART. 25. FARM-LIFE INSTRUCTION IN COUNTY HIGH SCHOOLS

5589. County high schools may maintain departments of instruction in agriculture and domestic science. There may be maintained in one or more of the public high schools of any county of the state complying with the provisions of this article, as hereinafter set forth, a department of agricultural instruction and a department of training in domestic science and home economics in order to better prepare the boys and girls of said county for farm life and home-making.

1911 (Pub.-Local), c. 449, s. 1; 1913, c. 105.

5590. Board of trustees of such school. The said school or schools shall be under the control and management of a board of trustees, consisting of the members of the board of education of the county and the chairman and secretary of the board of trustees of each high school in which such departments are established.

1911 (Pub.-Local), c. 449, s. 2; 1913, c. 105.

5591. Selection and location of school. After due advertisement inviting bids from the public high schools of the county now in existence or hereafter created, the county board of education of the county shall designate the place or places at which such agricultural or domestic science work shall be established. In designating a school, the county board of education shall take into consideration the financial aid offered for maintenance and equipment, desirability and suitability of location. But no such department shall be established in a school which is located in a town of more than one thousand inhabitants, nor within two miles of the corporate limits of any city or town of more than five thousand inhabitants.

1911 (Pub.-Local), c. 449, s. 3; 1913, c. 105.

5592. Maintenance of schools; buildings and equipment. For the maintenance of such school or schools, the county board of education of the county wherein the school is established shall provide annually out of the public school fund, or by donation or local tax, not exceeding twenty-five hundred dollars. The present average school term of the county shall not be shortened, however, by the appropriation herein designated.

Any school applying for the benefits to be derived under this article shall first provide a building, with recitation rooms, laboratories, and apparatus necessary for efficient instruction in the prescribed courses of study, and such dormitory buildings as the county board of education may require, and a farm of not less than ten acres of good arable land, said land to be situated not more than one mile from the school buildings.

Before the county board of education shall designate any school as a place at which the agricultural and domestic science work shall become a part of the school curriculum, it shall first submit to the state superintendent of public instruction for his inspection and approval the equipment provided for the school.

1911 (Pub.-Local), c. 449, s. 4; 1913, c. 105.

5593. Purpose of school and course of study. The purposes of said school or schools are to give to the boys and girls such preparation as is now given in the said county public high schools, and, in addition to that, to give to the boys training in agricultural pursuits and farm life, and to prepare the girls for home-making and home-keeping. The course of study for the school or schools shall be subject to the approval of the state superintendent of public instruction and an advisory board of farm-life schools to be appointed by him.

1911 (Pub.-Local), c. 449, s. 5.

5594. Faculty and schedule of work. The teacher or teachers of the public high school, the teacher of agriculture, and the teacher of domestic science shall constitute the faculty of the county high school, who shall arrange the weekly schedule of work and submit such weekly schedule to the county superintendent of education of the county for his approval.

1911 (Pub.-Local), c. 449, s. 6; 1913, c. 105.

5595. Authority of high school principal. Nothing in this article shall be construed to lessen the power and authority of the principal of the high school, but the instructors in the various departments shall be considered members of the faculty of which the high school principal is head.

1911 (Pub.-Local), c. 449, s. 8.

5596. Qualifications of teachers. No person shall be employed as teacher in agriculture or domestic science in the school or schools herein provided for unless the applicant has furnished to the trustees satisfactory evidence of a liberal English education, and, in addition thereto, special preparation and fitness for the specific branches to be taught, said qualifications to be passed upon by the county superintendent of the county, and, if approved, submitted to the state superintendent for his approval. In addition to the above requirements, the person shall hold a high school teacher's certificate on all required subjects except Latin, Greek, and Modern Languages.

1911 (Pub.-Local), c. 449, s. 9; 1913, c. 105.

5597. Students from other counties. The board of trustees of the school or schools herein provided for is authorized and empowered to admit students from other counties of the state to said school or schools, upon payment of such tuition charges as said board of trustees may fix, but all students who are residents of the county complying with the provisions of this article shall be admitted to any of said schools without charge for tuition. There shall be no discrimination against students coming from other counties in the charges fixed for board and incidentals.

1911 (Pub.-Local), c. 449, s. 10; 1913, c. 105.

5598. Agricultural farm life and extension work. It shall be part of the duty of the teachers of agriculture and domestic science to conduct agricultural farm-life and extension work in the county in coöperation, as far as possible, with such work carried on in said county by the state department of agriculture, the North Carolina state college of agriculture and engineering, and the United States department of agriculture; to hold township and district meetings in various parts of the county from time to time, for farmers and farmers' wives; to co-operate with the county superintendent of education of said county and with the commissioner of agriculture, if such officer exists, in stimulating, directing, and supervising practical farm-life work in the public high school and the elementary schools of said county, and in providing instruction through the teachers' association and through a special short course of study at the schools where agriculture and domestic science instruction is given for the public school teachers of the county.

1911 (Pub.-Local), c. 449, s. 11; 1913, c. 105.

5599. Appropriation by state. Upon its being made to appear to the state board of education that any county has complied with all the provisions of this article for establishment, maintenance, and equipment of an agricultural department and a domestic science department in connection with one or more of the public high schools of the county, it shall appropriate and pay to the county board of education of the said county for such purpose an amount equal to that appropriated and furnished by the county for said work. Said appropriation by the state board of education shall not exceed the sum of twenty-five hundred dollars annually for the maintenance of said work in the county, to be paid by the state treasurer out of the funds appropriated for the maintenance of county farm-life schools under article 24 of this chapter.

1911 (Pub.-Local), c. 449, s. 7; 1913, c. 105, s. 2.

See section 5587.

5600. Share of state appropriation for agriculture and domestic science education to be paid to county adopting this plan. All money that is now or may hereafter be appropriated by the general assembly, the state board of education, or other state authority for agricultural and domestic science education, a part of which appropriation would, except for this article, be appropriated to the county complying with the provisions of this article absolutely, or upon a contingency or contingencies, then and in that event such appropriation which would go to said county shall be turned over to the county board of education of that county to aid in carrying out the provisions of this article. Compliance with the provisions of this article by the authorities of such county shall be sufficient to entitle said county to its proportion of any appropriation of money already made or which may hereafter be made for training in the science of agriculture or domestic science. The state superintendent of public instruction shall issue a requisition on the state auditor for the amount so apportioned to said county, and he shall issue his warrant to the county treasurer of the county, and the money shall be placed by the treasurer to the credit of the school or schools of the county in which the agricultural or domestic science work is being conducted. All moneys thus placed to their credit shall be used exclusively for the purpose of instruction in agriculture and domestic science.

1911 (Pub.-Local), c. 449, s. 7; 1913, c. 105, s. 2.

5601. County appropriations; limitation. The amount annually set aside out of the public school fund by any county for maintenance of such farm-life departments shall not operate to increase the amount to which the county would have been entitled from the state public school fund, if said public school apportionments for farm-life departments had not been set aside. Such apportionments shall be included in the necessary expenses for a six months school term for which a tax is required to be levied under section 5486.

1915, c. 236, s. 7.

See Board of Education v. Comrs., 174-469.

ART. 26. KINDERGARTENS

5602. Election as to kindergartens and special tax. Upon a petition by the board of directors or trustees or school committee of any school district, endorsed by the county board of education, the board of county commissioners, after thirty days notice at the courthouse door and three other public places in the district named, shall order an election to ascertain the will of the people within said district whether there shall be levied in such a district a special annual tax of not more than fifteen cents on the one hundred dollars worth of property and forty-five cents on the poll for the purpose of establishing kindergarten departments in the schools of said districts. The election so ordered shall be conducted under the rules and regulations for holding special-tax elections in special school districts, as provided in article 18 of this chapter.

At such election those who are in favor of the special tax shall vote a ballot on which shall be printed the words, "For Kindergartens," and those who are opposed shall vote a ballot on which shall be printed the words "Against Kindergartens."

If a majority of the qualified voters shall vote in favor of the tax, then it shall be the duty of the board of trustees or directors or school committee of said district to establish and provide for kindergartens for the education of the children in said district of not more than six years of age, and the county commissioners shall annually levy a tax for the support of said kindergarten departments not exceeding the amount specified in the order of election. That said tax shall be collected as all other taxes in the county are collected and shall be paid by the sheriff to the treasurer of the said school district, to be used exclusively for providing adequate quarters and for equipment and for the maintenance of said kindergarten department.

1915, c. 234, ss. 1, 2, 3.

5603. Qualifications of kindergarten teachers. That no teacher or instructor shall be employed to teach in the kindergartens of the state who has not taken at least a two years course in kindergarten training and received a diploma from a recognized normal training school approved by the state board of examiners: Provided, first, that in lieu thereof they may offer an equivalent of training satisfactory to the state board of examiners; second, that all rules and regulations for examination, qualification, and admission of teachers and instructors in the free public school kindergartens in this state shall be prescribed and approved by the state board of examiners; third, that no kindergarten teacher shall be allowed to teach a kindergarten department larger than would result from an enrollment of twenty pupils.

1915, c. 234, s. 4.

ART. 27. CHILDREN AT ORPHANAGES

5604. Children in orphanages permitted to attend public schools; expenses. Children living in and cared for and supported by any institution established or incorporated for the purpose of rearing and caring for orphan children shall be considered legal residents of said district in which the institution is located, and a part or all of said orphan children shall be permitted to attend the public school or schools of said district, and the extra expenses of teaching said children for six months in the public school or schools of said district shall be borne as follows:

Three-fourths of the extra expense for a term of six months of every year, as a result of the attendance of said children, shall be paid out of the state public school fund and one-fourth out of the county fund, unless otherwise provided.

1919, c. 301, s. 1.

5605. County board to provide for expense in budget. The county board of education is hereby authorized to provide in the county school budget for the extra expense that may be incurred by said school as the result of the attendance of said orphan children, and the county superintendent shall set forth, in blanks prepared by the state superintendent of public instruction, the number of such children that may attend, in what grades or classes they will be enrolled, and how many extra teachers will be required as the result of the operation of this article. The salaries of such extra teachers for six months shall be provided for in the county budget as provided in the preceding section.

1919, c. 301, s. 2.

5606. After six months, tuition fees may be charged. The board of trustees in special-tax or special chartered districts may charge such tuition fees as may be agreed upon between the authorities of said institution and the board of trustees for the attendance of such orphan children for the remainder of the school term, after the constitutional provision for six months school has been complied with.

1919, c. 301, s. 3.

ART. 28. INSTRUCTION OF ILLITERATES

5607. School for adult illiterates; appropriation. The state board of education is authorized to provide rules and regulations for conducting schools to teach adult illiterates, and such schools when provided for shall become a part of the public school system of the state and shall be supported as is provided for other public schools of the state.

1919, c. 161, s. 1.

5608. Funds provided. The county board of education shall, upon direction from the state superintendent of public instruction, provide annually in the county school budget, unless otherwise provided, a sum necessary to teach the adult illiterates in accordance with such rules and regulations, and a like sum shall be appropriated from the state public school fund.

1919, c. 161, s. 2.

5609. Expenses of organization and direction. The state board of education is authorized to use annually a sum not to exceed five thousand dollars of the state public school fund for the organization and direction of said work of teaching illiterates under the direction of the state superintendent of public instruction.

1919, c. 161, s. 3.

ART. 29. CONTRACTS WITH PRIVATE SCHOOLS

5610. Contract between school committee and teacher of private school. In any school district where there may be a private school regularly conducted for at least six months in the year, unless it is a sectarian or denominational school, the school committee may contract with the teacher of such private school to give instruction to all pupils between the ages of six and twenty-one years in the branches of learning taught in the public schools, as prescribed in this chapter, without charge and free of tuition.

Rev., s. 4151.

5611. Teacher may be paid out of school funds. By agreement arranged between the committee and the teacher, the school committee may pay the teacher for services out of the public school fund apportioned to the district.

Rev., s. 4151.

5612. To have certificate and to report. Every teacher of the public school branches in such private school shall obtain a certificate from the state board

of examiners covering the class of work to be done before beginning his or her work, and shall from time to time make such reports as are required of other teachers under this chapter.

Rev., s. 4151; 1919, c. 254, s. 8.

5613. County superintendent to employ and dismiss. The county superintendent shall have the same authority in respect to the employment and dismissal of teachers under this article, and in every other respect, as is conferred in other articles.

Rev., s. 4151.

5614. Contract to designate minimum term. All contracts made under this article shall designate the minimum length of the public school term, which shall not be less than the average length of the public school term of the county of the preceding year.

Rev., s. 4151.

5615. Limit on amount paid school under contract. The amount paid such private school for each pupil in the public school branches, based on the average daily attendance, shall not exceed the regular tuition rates in such school for such branches of study.

Rev., s. 4151.

5616. Aided schools to be public schools. Every school to which aid shall be given under this article shall be a public school, to which all children living within the district, between the ages of six and twenty-one years, shall be admitted free of charge for tuition.

Rev., s. 4151.

5617. Tuition for higher instruction; adult pay students. In case of contract with the teacher of a private school, under this article, tuition may be charged for instruction in higher branches not mentioned in the section of this chapter specifying the branches to be taught in all public schools, if the apportionment of funds for the public schools of the district would, in the opinion of the county board of education, be insufficient to provide instruction in these higher branches of study if the public school were taught separately. The committee may admit pay students over twenty-one years of age.

Rev., s. 4151.

ART. 30. RURAL LIBRARIES

5618. How established. When the patrons and friends of any free public school in which a library has not already been established by aid of the state shall raise by private subscription and tender to the treasurer of the county school fund for the establishment of a library to be connected with the school the sum of ten dollars, the county board of education shall appropriate from the general county school fund the sum of ten dollars for this purpose. After any school district shall have had a library for ten years or longer under the provisions of this section, said school district shall be entitled to receive a second library in accordance with the foregoing provisions of this section.

Rev., s. 4172; 1901, c. 662, s. 6; 1903, c. 226, s. 1; 1905, c. 381; 1915, c. 236, s. 1(d).

5619. Management. The county board of education shall appoint one intelligent person in the school district the manager of the library, and shall also appoint one competent person, well versed in books, to select books for such libraries as may be established under these provisions from lists of books approved by the state superintendent of public instruction.

Rev., s. 4172; 1901, c. 662, s. 6; 1903, c. 226, s. 1; 1905, c. 381.

5620. Donation by state board. As soon as the county board shall have made an appropriation for a library in the manner prescribed, the county superintendent shall inform the secretary of the state board of education of the fact, whereupon the state board shall remit to the treasurer of the county school fund the sum of ten dollars additional for the purchase of books.

Rev., s. 4173; 1901, c. 662, s. 7; 1903, c. 226, s. 2; 1905, c. 381, s. 2.

5621. Books and bookcases. Within thirty days after the payment of the money to the treasurer of the county school fund, the person appointed to select the books shall submit the list of books to be purchased and prices of same to such treasurer, who shall order the books at once. The treasurer shall receive no compensation except his regular commission. The county board shall furnish, at the expense of the general county school fund, a neat bookcase, with lock and key, to each library, upon application of the county superintendent.

Rev., s. 4174; 1901, c. 662, s. 8; 1903, c. 226, s. 3; 1905, c. 381, s. 3.

5622. Rules by state superintendent. The local manager of every library shall carry out such rules and regulations for the proper use and preservation of the books as may be established by the state superintendent of public instruction, and shall, on or before June thirtieth of each year, make to the state superintendent such reports as he shall require.

Rev., s. 4175; 1901, c. 662, s. 9; 1903, c. 226, s. 4; 1905, c. 381, s. 4.

5623. Exchange of libraries. The local managers of two or more libraries may, by agreement, exchange libraries; but no exchange shall be made oftener than once in six months, and no part of the expense of exchanging libraries shall be paid out of the public funds.

Rev., s. 4176; 1901, c. 662, s. 10; 1903, c. 226, s. 5; 1905, c. 381, s. 5.

5624. Enlargement of libraries. When the patrons and friends of any free public school in which a library has been established under the provisions of this article shall raise by private subscription and tender to the treasurer of the county school fund the sum of five dollars for the enlargement of the library, the county board of education shall appropriate from the general school fund the sum of five dollars, and the state board of education shall remit to the treasurer of the county school fund the sum of five dollars. The money thus collected and appropriated shall be used for the enlargement of libraries already established under the same rules and restrictions as govern the establishment of new libraries.

Rev., s. 4177; 1903, c. 226, s. 6; 1905, c. 381, s. 6; 1907, c. 835, s. 1(k).

5625. Limitation on number of libraries. Not more than six new libraries, in addition to those already established, shall be established biennially in any county

under the provisions of the preceding sections, and not more than six libraries already established in any county shall be entitled biennially to the benefits provided for the enlargement of libraries.

Rev., s. 4178; 1901, c. 662, s. 12; 1903, c. 226, s. 8; 1905, c. 381, ss. 8, 9.

5626. New libraries established regardless of previous number with funds previously appropriated. After November thirtieth, nineteen hundred and six, and after November of every second year thereafter, if any of the aforesaid biennial appropriation for the years ending on such date shall still be in the hands of the state treasurer, any free public school which shall fulfill the conditions set forth in the preceding sections of this article shall be entitled to receive the benefits of this article, regardless of the number of libraries already established in the county in which the school is located, until the aforesaid balance of each biennial appropriation available for the purpose is exhausted.

Rev., s. 4178; 1901, c. 662, s. 12; 1903, c. 226, s. 8; 1905, c. 381, ss. 8, 9.

5627. General appropriations of additional state funds. The sum of seven thousand five hundred dollars of the appropriation for the public schools of the state is hereby biennially appropriated and set apart to be expended by the state board of education under the provisions of this article. Of each biennial appropriation a sum not exceeding five thousand dollars may be expended by the state board of education in the establishment of new libraries, and a sum not exceeding two thousand five hundred dollars may be expended by the state board in the enlargement of libraries according to the provisions of this article. Any balance of the biennial appropriation of two thousand five hundred dollars for the enlargement of libraries remaining in the hands of the state treasurer at the end of each biennial period shall be used for the establishment of new libraries in accordance with the provisions of this article.

Rev., s. 4179; 1901, c. 662, s. 11; 1903, c. 226, s. 7; 1905, c. 381, s. 7; 1909, c. 525, s. 7.

5628. Exclusion of cities and towns from benefits of article. No school district in any incorporated town with a population exceeding one thousand persons shall receive any moneys under the provisions of this article.

Rev., s. 4178; 1905, c. 381, s. 9.

ART. 31. SCHOOL EXTENSION WORK

5629. Moving pictures for rural communities; cost. It shall be the duty of the state superintendent of public instruction to provide for a series of rural entertainments, varying in number and cost and consisting of moving pictures selected for their entertaining and educational value, which entertainments may be given in the rural schoolhouses of the state as herein provided. The cost of such entertainment shall be borne one-third by the state and two-thirds by the county board of education or the rural school community desiring said entertainment.

1917, c. 186, ss. 1, 2.

5630. State superintendent to supply information and provide for entertainments; community deposit. It shall be the duty of the state superintendent of public instruction to inform the various county boards of education of the num-

ber, character, and cost of the entertainments provided by him under the provisions of this article; and upon application of any county board of education, agreeing to pay two-thirds of the cost of any such entertainments, it shall be the duty of the state superintendent of public instruction to provide for the giving of such entertainments in the rural schoolhouse or houses designated in the application. Any rural school community shall be entitled to the benefits of this article by depositing with its county board of education two-thirds of the cost of entertainments desired, and in all cases it shall be the duty of the county board of education receiving such deposits to make immediate application to the state superintendent of public instruction as herein provided.

1917, c. 186, s. 3.

5631. Health and agricultural authorities to coöperate. The state board of health and the commissioner of agriculture are hereby authorized and directed to coöperate with the state superintendent of public instruction in arranging for the entertainments provided for by this article, to the end that the entertainment may, if it is deemed advisable, include the subjects of public health and agriculture.

1917, c. 186, s. 4.

5632. Appropriation. In order to carry out the provisions of this article the sum of twenty-five thousand dollars per annum is hereby appropriated out of the general funds of the state not otherwise appropriated, to be expended by the state board of education under the direction and supervision of the state superintendent of public instruction.

1917, c. 186, s. 5.

SUBCHAPTER V. TEACHERS, TRAINING, CERTIFICATION, EMPLOYMENT, DUTIES, AND SALARIES

ART. 32. STATE BOARD OF EXAMINERS AND INSTITUTE CONDUCTORS

5633. Board constituted; membership; terms; vacancies. There shall be and is hereby constituted a state board of examiners and institute conductors, which shall consist of six members—three men and three women—of recognized ability, character, professional training, and successful experience in teaching or in supervising schools, to be designated as institute conductors. They shall be appointed by the governor, three for a term of two years, three for a term of four years, and their successors for a term of four years. All vacancies occurring in the membership of the board by death or resignation or otherwise shall be filled in the same manner for the unexpired term.

1917, c. 146, s. 1.

5634. Chairman and secretary ex officio. The state superintendent of public instruction shall be ex officio chairman of the board, and the state supervisor of teacher-training and superintendent of the state normal schools for the colored race and for the Cherokee Indians shall be ex officio secretary.

1917, c. 146, s. 1.

NOTE.—See art. 21 above and Salaries and Fees, sec. 3869, note.

5635. Salaries of members. The salary of each institute conductor shall be fixed by the state board of education, upon the recommendation of the executive committee of the North Carolina teachers' assembly, at a sum not to exceed three thousand dollars per year, exclusive of expenses.

1917, c. 146, s. 1; 1919, c. 247, s. 5.

5636. Removal of members; appeal. For immoral conduct, incompetency, failure to perform duty, or other good and sufficient cause, the state board of education may remove from office any member of said board of examiners and institute conductors, after due notice in writing to said member of the charges, who shall be given at least five days to appear and answer and offer evidence, and who shall have the right of appeal from the action of the state board of education to the courts of the state.

1917, c. 146, s. 1.

5637. Supervision of teacher-training. In coöperation with the supervisor of teacher-training and superintendent of the state normal schools for the colored race and for the Cherokee Indians, the board of examiners and institute conductors shall plan, direct, and supervise the work of those schools, and shall have general direction and supervision of the work of all teachers' associations and reading circles and of such other work as may be deemed necessary for professional training and home study for teachers.

1917, c. 146, s. 7.

5638. County teachers' institutes. The board of examiners and institute conductors shall plan, direct, and the six members of the board designated above as institute conductors shall conduct, biennially in each county in North Carolina, a county teachers' institute for not less than two weeks for the public school teachers of that county, at such time and place therein as may be designated by the board, having due regard in fixing the time and place to the convenience of the teachers and the recommendations of the county board of education and county superintendent.

1917, c. 146, s. 8.

5639. Substitute for two weeks institute authorized. The state board of examiners and institute conductors is authorized to provide in lieu of the two weeks county institute, teacher-training courses in public high schools, county summer schools for teachers, or such other means for increasing the efficiency of the teachers in the schools of the state, and to make all needful rules and regulations governing the same: Provided, that not more than one-half of the cost of maintaining the same shall be paid out of the state public school fund.

1919, c. 102, s. 12.

5640. Attendance of teachers required; penalty for failure. All public school teachers of the state, urban and rural, including all public high school teachers, principals, supervisors, and superintendents, are hereby required to attend biennially some county institute continuously for two weeks or some summer school for teachers accredited by said board, continuously for one entire term of such summer schools, unless excused from attendance by said board for sickness evidenced by the certificate of a physician, or for other cause adjudged by the board

to be providential. Failure to attend such institute or accredited summer school, unless so excused, shall debar any person so failing from teaching or supervising in any public school, high school, urban or rural, until such person shall have attended some county institute or summer school as herein required; and the board is authorized to cancel the certificate of any person failing to comply with the provisions of this section.

1917, c. 146, s. 8.

5641. Separate and joint institutes; negro assistants. The board of examiners and institute conductors shall provide for separate county institutes for the teachers of each race, and is further authorized to provide for joint county institutes for two or more counties for the teachers of either race, and to provide for holding the county institute of any county in which an accredited summer school is conducted in conjunction with said summer school. The board is hereby authorized to employ competent negro teachers to assist in conducting the county institutes for negro teachers and to fix their compensation, which shall be paid out of the funds provided in this article.

1917, c. 146, ss. 8, 11.

5642. Schedule of institutes. The schedule of institutes shall be arranged annually so as not to interrupt the regular session of the public schools, rural or urban, in any county, except with the consent of the county board of education or the trustees of urban schools operated under special charters.

1917, c. 146, s. 8.

5643. Examinations, accrediting, and certificates. The board of examiners and institute conductors shall have entire control of examining, accrediting without examination, and certificating all applicants for the position of teacher, principal, supervisor, superintendent, and assistant superintendent in all public elementary and secondary schools of North Carolina, urban and rural. The board shall prescribe rules and regulations for examining, accrediting without examination, and certificating all such applicants for the renewal and extension of certificates and for the issuance of life certificates.

1917, c. 146, s. 2.

5644. Certificate prerequisite to employment. No person shall be employed or serve in the public schools as teacher, principal, supervisor, superintendent, or assistant superintendent who shall not be certificated for such position by the board of examiners and institute conductors in accordance with the law.

1917, c. 146, s. 2.

5645. Teacher must be eighteen. No certificate to teach shall be issued to any person under eighteen years of age.

Rev., s. 4163.

5646. Second and third grade certificates. The examination and certification of all applicants for second and third grade certificates shall be under the control of the county superintendent of each county or of the town or city superintendent of each town or city system operated under any special acts or charter.

1917, c. 146, s. 2.

5647. Approval of certificates; refusal of approval; appeal and review. No certificate issued by the board shall be valid until approved and signed by the county superintendent of the county or the city superintendent of the city in which the examination of the holder of said certificate was held, or in the schools of which the holder of said certificate, if issued without examination, applies to teach. Any certificate when so approved by said county or city superintendent shall be of state-wide validity, and in case such county or city superintendent shall refuse to approve and sign any such certificate, he shall notify the secretary of the state board of examiners and institute conductors and state in writing the reasons for such refusal. The said board of examiners and institute conductors shall have the right, upon appeal by the holder of said certificate, to review and investigate and finally determine the matter.

1917, c. 146, s. 2.

5648. Certificates heretofore granted; renewals. All state high school certificates, five-year state elementary school certificates, and first grade county certificates in force on March fifth, nineteen hundred and seventeen, shall continue in force until the date of their expiration as stated in each certificate, after which the present holders of such certificates shall be subject to such rules and regulations as the state board of examiners and institute conductors may adopt in regard to the issuance or renewal, with or without examination, of certificates of the same class.

1917, c. 146, s. 3.

5649. Temporary and permanent certificates to superintendents and assistants. The board of examiners and institute conductors shall issue to all city superintendents, to all county superintendents, and to all assistant superintendents in service on March fifth, nineteen hundred and seventeen, temporary superintendents' or assistant superintendents' certificates without examination, and prescribe rules and regulations for the renewal and extension of the same. In cases of undoubted fitness, competency, and progressive efficiency, evidence of which shall be submitted in writing to said board, it shall issue to all such superintendents and assistant superintendents a permanent certificate without examination, under such rules and regulations as it may adopt.

1917, c. 146, s. 3.

5650. Teachers to be listed July 1, 1917; may be certified. On or before July first, nineteen hundred and seventeen, the superintendent or other supervising officer of every city, town, or other specially chartered school that now has power and authority to elect teachers without a county or state certificate shall file with the state board of examiners and institute conductors a complete list of the names of all teachers, principals, and supervisors in service in the school or schools under his supervision during the school year ending June thirtieth, nineteen hundred and seventeen, together with a certified statement from them and from said superintendent or supervising officer of the qualifications, preparation, professional training, and teaching experience of each, and the recommendation of said superintendent or supervising officer as to the grade of certificate to which each is entitled. Whereupon the state board of examiners and institute con-

ductors may authorize and cause to be issued to such teachers, principals, and supervisors, without examination, a permanent certificate of the grade recommended, subject, however, to the rules and regulations of said board for keeping permanent certificates in force.

1917, c. 146, s. 3.

5651. Questions for examination; lists printed and distributed. The state board of examiners and institute conductors shall prepare questions for the examinations authorized under this article, and the state superintendent of public instruction shall cause lists of the questions so prepared to be printed, and shall, before the date of such examination, send in sealed packages, not to be opened until the day of the examination, to each superintendent or other person appointed to conduct said examinations in the various counties or cities of the state, a sufficient number of such lists.

1917, c. 146, s. 4.

5652. Dates for examinations; special examinations. The second Tuesday in April, July, and October of each year is hereby designated for said examinations, which may be continued from day to day for three successive days, under such rules and regulations as said board may adopt; but no examination shall commence on any other day than the first day of each period mentioned in this section, and no examination shall be held at any other time. The board may in its discretion provide for special examinations to be conducted by such persons as it may appoint.

1917, c. 146, s. 4.

5653. Conduct of examinations; transmission of papers. The examinations shall be conducted by the county superintendent of each county for all applicants in his county, and in cities and towns of two thousand or more inhabitants the examinations for applicants for positions in the schools under their supervision may be conducted by the licensed superintendents of the schools in such cities and towns. All examinations of applicants for superintendents' certificates shall be conducted by the state board of examiners and institute conductors under such rules and regulations as it may adopt therefor. All examination papers shall be promptly transmitted to the secretary of the state board of examiners and institute conductors.

1917, c. 146, s. 4.

5654. Temporary local certificates. Upon the recommendation of the superintendent concerned, said board may grant a temporary certificate or permit, valid in the county or city designated, to any teacher who, at the time of the last preceding examination, was not in the state, or who at such time was prevented by illness from taking the examination, as evidenced by the certificate of a physician. Such temporary certificate or permit, however, shall be valid only from the date of issuance to the date on which the state board of examiners and institute conductors shall make their report upon applicants at the next meeting succeeding regular examination, and no such temporary certificate or permit shall be renewed.

1917, c. 146, s. 4.

5655. Assistants to board; stenographer; printing. The board may, with the approval of the state board of education when adjudged by it absolutely necessary, employ competent persons to assist in the reading and grading of examination papers, and shall fix the compensation of such persons not to exceed five dollars a day for the time employed, to be paid upon the requisition of the chairman of the board out of the funds provided under this article. The board is authorized to employ a stenographer at such compensation as it may fix, and to have done as public printing by the state printer all printing necessary for its work.

1917, c. 146, s. 5.

5656. Employment of persons without certificate unlawful; appropriation withheld; salaries not paid. After July first, nineteen hundred and seventeen, it shall be unlawful for any board of trustees or school committee of any public school that receives any public school money from county or state to employ or keep in service any teacher, superintendent, principal, supervisor, or assistant superintendent that does not hold a certificate in compliance with the provisions of the law. Upon notification by the state board of examiners and institute conductors to the state board of education or to the county board of education that any school committee or board of trustees is employing or keeping in service a teacher, supervisor, principal, superintendent, or assistant superintendent in violation of the provisions of this section, the state board of education shall withhold from such county any and all appropriations from the state treasury for such school, and said county board of education shall withhold from said school any and all appropriations from the county school fund until compliance with the law.

The county, town, or city superintendent or other official is forbidden to approve any voucher for salary for any person employed in violation of the provisions of this section, and the treasurer of the county, town, or city schools is hereby forbidden to pay out of the school fund the salary of any such person: Provided, that nothing herein shall prevent the employment of temporary substitute or emergency teachers under such rules as the state board of examiners and institute conductors may prescribe.

1917, c. 146, s. 6.

5657. Classes of first grade certificates. There shall be the following classes of first grade certificates: (1) Superintendents' and assistant superintendents'; (2) High school principals'; (3) High school teachers'; (4) Elementary school teachers'; (5) Elementary supervisors'; and (6) Special. The state board of examiners and institute conductors may subdivide and shall define in detail the different classes of first grade certificates, determine the time of their duration and validity, prescribe the standards of scholarship for same, and the rules and regulations for the examination for them and for their issuance, and their renewal or extension.

1917, c. 146, s. 9.

5658. Misdemeanor to tamper with examination questions. Any person who purloins, steals, buys, receives, or sells, gives, or offers to buy, give, or sell any examination questions or copies thereof of any examination provided and pre-

pared by law, before the date of the examination for which they shall have been prepared, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined or imprisoned, or both, in the discretion of the court.

1917, c. 146, s. 10.

ART. 33. TEACHER'S HEALTH CERTIFICATE

5659. Health certificate required for teachers. Any person teaching in the public schools of the state, or occupying the position of superintendent of public instruction in any county in the state, after the first day of October, one thousand nine hundred and nineteen, shall secure each year before assuming his or her duties a certificate from the county physician, or other reputable physician of the county, certifying that the said person has not an open or active infectious stage of tuberculosis, or any other contagious disease.

The physician shall make the aforesaid certification on a form supplied by the North Carolina state board of health, and without charge to the teacher applying for the certification.

1919, c. 177, ss. 1, 2.

5660. Violation of article a misdemeanor. Any person violating any of the provisions of this article shall be guilty of a misdemeanor and subject to a fine of not more than fifty dollars nor more than thirty days imprisonment.

1919, c. 177, s. 3.

ART. 34. EMPLOYMENT OF TEACHERS

5661. School committee employs and dismisses; hearing before dismissal. The school committee shall have authority to employ and dismiss teachers, but no teacher shall be dismissed until charges shall have been filed in writing with the county superintendent, and after a hearing shall have been had before the committee of the district in which the teacher is teaching, after two days notice to the teacher.

Rev., s. 4161; 1907, c. 835, s. 1 (h).

5662. Committee meeting before employment. The committee shall meet at convenient times and places for the employment of teachers for the public schools, and no teacher shall be employed by any committee except at a regularly called meeting of such committee, due notice of such meeting having been given at three public places by the committee. The county board of education shall fix annually a day and place in each township for the meeting of the township or district committeemen of said townships. The committeemen, thereupon, in conference with the county superintendent, with whom applications must have been previously filed by all applicants, select the teachers for their respective schools.

Rev., 4161; 1913, c. 149, s. 1 (f); 1919, c. 254, s. 18.

5663. Ineligibility of members of committee. No person while serving as a member of any township or district committee or county board of education shall be eligible to be elected as a teacher of any school, and should such person be elected said election is hereby declared null and void.

1919, c. 254, s. 7.

Mandamus to compel county superintendent to sign order: *Ducker v. Venable*, 126-447.

5664. County superintendent must approve election and sign salary vouchers. No election of any teacher or assistant teacher shall be deemed valid until such election has been approved by the county superintendent. The county superintendent must sign all vouchers for teachers' salaries. No voucher for the salary of a teacher of any school shall be signed by any county superintendent unless a copy of such teacher's contract has been filed with him as herein provided, and unless he shall have received satisfactory evidence that such teacher has been elected in strict accordance with the law.

Rev., s. 4161; 1913, c. 149, s. 1(f).

5665. Limitation on period and amount of teacher's contract. No contract for teachers' salaries shall be made during any year to extend beyond the term of office of the committee, nor for more money than accrues to the credit of the district for the fiscal year during which the contract is made.

Rev., s. 4161.

ART. 35. DUTIES OF TEACHERS

5666. To maintain order and encourage virtue; to dismiss pupils. It shall be the duty of all teachers of free public schools to maintain good order and discipline in their respective schools; to encourage morality, industry, and neatness in all of their pupils, and to teach thoroughly all branches which they are required to teach. Pupils who wilfully and persistently violate the rules of the school and any of immoral life and character shall be dismissed by the teacher.

Rev., s. 4166; 1901, c. 4, s. 63.

Authority of teacher as to correction and discipline, see annotations under section 4215. Liability of teacher for injury to pupil: *Drum v. Miller*, 135-204.

5667. Records and reports of teachers. 1. Every teacher or principal of a school to which aid is given under this chapter shall keep such record and classification of pupils as shall be prescribed by the state superintendent of public instruction or the county board of education.

2. At the end of every term of a public school the teacher or principal of the school shall exhibit to the school committee a statement of the number of pupils, male and female, the average daily attendance, the number of pupils completing the elementary grades, the length of term and the time taught. But monthly, and, if required by the county superintendent, weekly, statements and reports shall be made by the teacher to the committee and to the county superintendent.

3. At the end of every term, and when requested at other times, every teacher or principal shall report to the county superintendent in such form and manner and on such blanks as shall be furnished by the county superintendent or state superintendent. The report shall contain a statement as to the length of term of the school, the race for which it was taught, the number, the sex, and average daily attendance of the pupils, and the number of the district in which the school is taught; the number of children on census blank not attending any school, number of children under seventeen years of age not attending any school, stating some causes why they did not attend; how many families having children of school age who did not send any of their children to school; how many families did, stating what personal effort has been made to get the children to attend school. The

county superintendent shall not approve the final voucher for the salary of any teacher or principal until all reports have been made according to law and until the register has been properly filled out and filed with him.

4. The principal or superintendent of every school or institution of learning supported in whole or in part by public funds shall report to the state superintendent at such time and in such form as he may direct.

Rev., ss. 4164, 4165; 1911, c. 135, s. 1(f); 1913, c. 149, s. 1(e).

ART. 36. SALARIES OF TEACHERS

5668. Salaries to be paid each class. Teachers with first grade certificates may receive such compensation as shall be agreed upon. Teachers with second grade certificates shall receive not more than forty-five dollars per month out of the public fund. Teachers with third grade certificates shall receive not more than twenty dollars per month, but no third grade certificates shall be renewed, and no holder of a third grade certificate shall be employed except as an assistant teacher. No teacher shall receive any compensation for a shorter term than one month, unless providentially hindered from completing the term. Twenty school days of not less than six hours nor more than seven hours each day shall be a month. The school term shall be continuous, as far as practicable. The county board of education shall fix, within the limits above prescribed, the maximum salary to be paid to teachers in each school in the county.

Rev., s. 4163; 1911, c. 135, s. 1(e); 1919, c. 254, s. 15.

5669. Payment of salaries. If the committee is satisfied that the provisions of this chapter have been complied with, they shall give an order on the treasurer of the county school fund, payable to such teacher, for the full amount due for services rendered. Orders on the treasurer shall be valid when signed by two members of the committee and countersigned by the county superintendent. The county board of education of every county is authorized and directed to provide for the prompt payment of all teachers' salaries due at the end of each school month.

Rev., s. 4164; 1913, c. 149, s. 1(j).

NOTE.—Salary vouchers must be signed by the county superintendent, see above, sec. 5664.

As to nature of orders issued by school committee, see *Wright v. Kinney*, 123-618.

As to fund out of which school orders payable, see *Bear v. Comrs.*, 124-204.

Judgments rendered upon school orders against county commissioners cannot be enforced by mandamus: *Bear v. Comrs.*, 124-204.

SUBCHAPTER VI. SCHOOL BUILDINGS, LOANS AND BONDS THEREFOR

ART. 37. BUILDING, REPAIRING, AND CONTRACTS FOR SCHOOLHOUSES

5670. Contracts for schoolhouses; county board to pay one-half cost. The building of new schoolhouses shall be by contract with the county board of education. The board shall pay not exceeding one-half the cost of the same out of the fund set aside for building, under section 5487 of this chapter, and the school dis-

trict in which any schoolhouse is erected shall pay the other part, and upon failure of such district to provide its part by private subscription or otherwise, the board is directed to take it out of the apportionment to that district; but the board shall not be authorized to invest any money in any new house that is not built in accordance with plans approved by the state superintendent of public instruction. All contracts for buildings shall be in writing, and all buildings shall be inspected, received, and approved by the county superintendent of public instruction before full payment is made therefor.

Rev., s. 4124; 1903, c. 435, s. 4.

Under this section the city graded schools were entitled to share in the reserve building fund provided for in Rev., 4116: *Comrs. v. Board of Education*, 163-404.

In the absence of abuse of discretion the court will not interfere with the action of the school officers in regard to buildings: *Pickler v. Board of Education*, 149-221; *Venable v. School Com.*, 149-120.

ART. 38. LOANS FOR SCHOOLHOUSE BUILDING

5671. Made by state board from state literary fund. The state board of education, under such rules and regulations as it may deem advisable, not inconsistent with the provisions of this chapter, may make loans from the state literary fund to the county board of education of any county for the building and improving of public schoolhouses or dormitories for rural high schools and teacherages and buildings for county farm-life schools in such county; but no warrant for the expenditure of money for such purposes shall be issued by the auditor except upon the order of the state superintendent of public instruction, with the approval of the state board of education.

Rev., s. 4053; 1903, c. 567, ss. 1, 2, 8; 1913, c. 149, s. 1(g); 1919, c. 254, s. 1.

5672. Appropriation from loan fund for free plans and inspection of school buildings. The state board of education may annually set aside and use out of the funds accruing to the interest of said state loan fund a sum not exceeding two thousand dollars, to be used for providing plans for modern school buildings to be furnished free of charge to districts, for providing proper inspection of school buildings and the use of state funds, and for such other purposes as said board may determine, to secure the erection of a better type of school buildings and the better administration of said state loan fund.

1919, c. 254, s. 21.

5673. Terms of loans. Loans made under the provisions of this article shall be payable in ten installments, shall bear interest at four per centum, payable annually, and shall be evidenced by the note of the county board of education, executed by the chairman and secretary thereof, and deposited with the state treasurer. The first installment of such loan, together with the interest on the whole amount then due, shall be paid by the county board on the tenth day of February after the tenth day of August subsequent to the making of such loan, and the remaining installments, together with the interest, shall be paid, one each year, on the tenth day of February of each subsequent year till all shall have been paid.

Rev., s. 4054; 1903, c. 567, s. 3.

5674. How secured and paid. At the January meeting of the county board of education, before any installment shall be due on the next tenth day of February, the county board shall set apart out of the school funds an amount sufficient to pay such installment and interest to be due, and shall issue its order upon the treasurer of the county school fund therefor, who, prior to the tenth day of February, shall pay over to the state treasurer the amount then due. And any amount loaned under the provisions of this law shall be a lien upon the total school funds of such county, in whatsoever hands such funds may be; and upon failure to pay any installment or interest, or part of either, when due, the state treasurer may deduct a sufficient amount for the payment of the same out of any fund due any county from any special state appropriation for public schools, or he may bring action against the county board of education of such county, any person in whose possession may be any part of the school funds of the county, and the tax collector of such county; and if the amount of school fund then on hand be insufficient to pay in full the sum so due, then the state treasurer shall be entitled to an order directing the tax collector of such county to pay over to the state treasurer all moneys collected for school purposes until such debt and interest shall have been paid.

Rev., s. 4055; 1903, c. 567, s. 3.

5675. Loans by county boards to school districts. The county board of education, from any sum borrowed under the provisions of this article, may make loans to any district in such county for the purpose of building schoolhouses in such district, and the amount so loaned to any district shall be payable in ten annual installments, with interest thereon at four per centum, payable annually. At the January meeting of such county board it shall deduct from the apportionment made to any district which has borrowed under the provisions of this article the installment and interest then due, and shall continue to deduct such amount at each annual January meeting until the whole amount shall have been paid, together with interest.

Rev., s. 4056; 1903, c. 567, s. 5.

ART. 39. BONDS FOR SCHOOLHOUSES IN COUNTIES, TOWNSHIPS, AND SCHOOL DISTRICTS

5676. Election upon petition of county board. The board of county commissioners of any county in the state shall, upon the petition of the county board of education, order an election after thirty days notice at the courthouse door and a publication of four weeks in some newspaper published in the county, to be held in any county, township, or school district which embraces an incorporated town or city, or in which there is maintained a public high school, to ascertain whether the voters in said county, township, or school district are in favor of issuing bonds for the purpose of building, rebuilding and repairing schoolhouses and furnishing the same with suitable equipment.

1915, c. 55, s. 1.

Section referred to in *Hood v. Sutton*, 175-98.

5677. Contents of petition and order of election. The amount of bonds to be issued and the rate of interest they are to bear, which shall not be more than six

per cent per annum, payable semiannually, and the length of time the bonds are to run, which shall not be more than twenty years, and the maximum tax that may be levied, which shall not exceed thirty cents on the one hundred dollars and ninety cents on the poll, shall be set forth in the petition of the county board of education and in the order for the election made by the board of county commissioners.

1915, c. 55, s. 1.

5678. Limit of amount of bonds. In no case shall the bonds authorized under this article for an entire county exceed the sum of one hundred thousand dollars, nor for a township or school district the sum of twenty-five thousand dollars, but the bonds for a township or school district may be in addition to the bonds for the entire county.

1915, c. 55, s. 1.

5679. Petition for second election. Upon petition of one-fourth of the resident freeholders in any county, township, or school district in which one election has previously been held and carried for a bond issue and tax under this article, a second election for increasing the bond issue and tax therefor, in said county, township, or school district for the purposes herein specified, not to exceed the maximum bond issue and tax herein fixed, shall be called and held in the manner herein prescribed for holding the first election.

1917, c. 142.

5680. Law governing election; ballots. The election for an entire county shall be held under the rules and regulations governing general elections as near as may be, and if for a township or school district, then under the rules and regulations governing elections in special-tax districts as prescribed under article 18 of this chapter, entitled Special Tax in Special School District; but whether the election be for a county or for a township or for a school district, a new registration shall be ordered. At said election those favoring the issuance of bonds and the levying of a special tax shall vote a ballot on which shall be printed the words "For Schoolhouse Bonds," and those who are opposed shall vote a ballot on which shall be printed the words "Against Schoolhouse Bonds." The expenses of holding such elections shall be paid out of the general school fund of the county.

1915, c. 55, s. 2.

5681. Issuance of bonds and levy of special tax. If a majority of the qualified voters shall vote "For Schoolhouse Bonds," then it shall be the duty of the board of county commissioners to issue bonds not exceeding the amount specified in the order of election as the county board of education may request, and shall thereafter annually levy a sufficient tax, not exceeding the amount specified in the order of election, to pay the interest on said bonds and create a sinking fund sufficient to pay the principal and interest on said bonds when they fall due.

1915, c. 55, s. 3.

5682. County board to sell bonds; disposal and investment of funds. The said bonds when so issued shall be delivered to the county board of education, who shall sell the same for not less than par and hold the proceeds for the benefit of

the county building fund if the election be for the entire county or for the benefit of the township or school district in which the election was held. The said fund shall be paid out upon the order of the committee or trustees of the township or school district to which the fund belongs, and upon order of the board of education if the fund belongs to the entire county. The sinking fund provided for by this article shall be invested by the county board of education in safe securities, or may be deposited in the bank that will pay as much as four per cent per annum compounded quarterly, and will give a sufficient bond for the safety of such deposit. The funds derived from the sale of bonds for the benefit of any school district having a bonded treasurer shall be deposited with said treasurer to the credit of such district: Provided, however, that no treasurer handling the funds derived from the sale of bonds voted under the provisions of this article shall receive any commission therefor.

1915, c. 55, s. 4; 1917, c. 285, s. 7.

5683. Collection of taxes; liability of officers. The taxes levied hereunder shall be collected by the sheriff or other officer charged with the collection of other taxes, and they shall in respect thereto be liable officially as well as personally to all requirements of the law now or hereafter to be prescribed for the faithful collection and payment of other county taxes.

1915, c. 55, s. 5.

ART. 40. BONDS FOR SCHOOLHOUSES IN CITIES AND TOWNS

5684. Authorities to issue bonds. Whenever the board of aldermen or other duly constituted authority of any incorporated town or city in the state, which is in charge of the finances, shall deem it necessary to purchase lands or buildings or to erect additional buildings for school purposes, the said board of aldermen or other authority is authorized and empowered to issue for said purposes, in the name of the town or city, bonds of such amount as the board of aldermen or other authority shall deem necessary, in such denominations and forms as the board of aldermen or other authority may determine.

1915, c. 81, s. 1.

This authority does not rest with board of aldermen where the district includes territory outside of corporate limits, but article 39 would apply: Hood v. Sutton, 175-98.

5685. Maturity of the bonds; interest. The time of the payment of the principal of these bonds shall not be more than thirty years from the date thereof. The bonds shall be serial bonds, the proportionate parts thereof being payable annually during the term for which they are issued. The bonds shall bear interest at no greater rate than six per cent per annum, payable semiannually.

1915, c. 81, ss. 1, 2.

5686. Authentication; sale of bonds; exempt from taxation. The bonds shall be signed by the mayor, attested by the town or city clerk or treasurer, and sealed with the corporate seal of said town or city, and shall bear the signature of the town or city clerk and treasurer written, engraved, or lithographed. The bonds shall be sold at either public or private sale, with or without notice, as the said board of aldermen or other authority may determine. In no case shall the bonds

be sold, hypothecated, or otherwise disposed of for less than their par value. The purchaser of said bonds shall not be bound to see to the application of the purchase money. Said bonds and their coupons shall be exempt from town or city taxation until after they become due, and the coupons shall be receivable in payment of town or city taxes.

1915, c. 81, ss. 2, 3.

5687. Special tax for payment of interest and principal. The board of aldermen or other proper authority of said towns and cities is authorized to levy and collect each year, in addition to all other taxes in said city, an ad valorem tax upon all the taxable property and polls, observing the constitutional ratio, in said city, sufficient to pay the interest on said school bonds as the same become due, and also at or before the time when the principal of said bonds become due a further uniform ad valorem tax upon all taxable property and polls, observing the constitutional ratio, in said city, sufficient to pay the same or provide for the payment thereof. Such taxes shall be levied and collected at the same time and in the same manner as other taxes are levied and collected in said city. The taxes collected under this section for the payment of said bonds and coupons shall be used for no other purpose, and it shall be the duty of the clerk and treasurer of the town or city, as the coupons are paid off and taken up, to cancel the same and report not less than twice a year to the board of aldermen or other proper authority the numbers and amounts of the coupons so canceled.

1915, c. 81, s. 4; 1917, c. 130, s. 1.

5688. Bond issue submitted to election. The question of the issue of said bonds shall be submitted to a vote of the qualified voters of each town or city, at such time as the board of aldermen or other proper authority of the town or city shall determine, under the rules and regulations prescribed for the election of the mayor and members of the board of aldermen of said city; the said board of aldermen or other authority shall cause a notice of said election and the purpose of same to be published in some newspaper of said town or city for thirty days before said election, and the clerk of the superior court of the county in which said town or city is located shall cause to be prepared and distributed at the various polling places in the said town or city a sufficient number of printed ballots favoring the issue of said bonds and a like number against the same; the said board of aldermen or other authority shall cause to be prepared and delivered at each polling place in the said town or city a ballot box indicating the purpose of the bond issue to be voted therein, as follows: "School bonds. \$....." (stating the amount authorized by the said board of aldermen or other authority). All qualified voters wishing to vote in favor of the issuing of said bonds and levying the taxes herein provided for shall vote a written or printed ticket with the words "For School Bonds," and those wishing to vote against issuing said bonds and the levying of the taxes herein provided for shall vote a printed or written ticket with the words thereon "Against School Bonds." If a majority of said qualified voters shall vote "For School Bonds" on the proposition submitted for issuing bonds for the purpose aforesaid, then it shall be deemed and held that the proposition receiving a majority of such qualified votes is favored and approved by the majority of the qualified voters of such town or city, and the said board of aldermen or other authority of such town or city shall cause

bonds to be prepared and issued for the purpose so approved of by a majority of the qualified voters of said town or city, and levy taxes in accordance with the provisions of this article.

1915, c. 81, s. 5.

See Hood v. Sutton, 175-98.

5689. Registration for election. The registration for the election shall be, if the board of aldermen or other authority shall so order, the same as that which is or may be provided for the election of the mayor or other officers of said town or city; or the said board of aldermen or other authority may, in their discretion, order a new registration in the manner provided by law for new registration for election of said mayor and other officers, which new registration may be especially for said bond election.

1915, c. 81, s. 6.

5690. Application and construction of article. This article shall apply to towns or cities which have powers under special acts or charters as well as to those who derive their powers from the general law. This article shall not be deemed or construed to repeal or abridge any powers, rights, or privileges heretofore or hereafter granted by any special acts to any town or city, but shall be construed to grant additional powers where no such powers have been granted, or coördinate powers where such powers have already been or shall be granted.

1915, c. 81, ss. 7, 8.

See Hood v. Sutton, 175-98.

SUBCHAPTER VII. TEXT-BOOKS

ART. 41. TEXT-BOOK COMMISSION AND SUBCOMMISSION; SUBJECTS; ADOPTION

5691. Commission created; duty. The state board of education is hereby constituted a state text-book commission, whose duty it is, acting conjointly with the subcommission, to select and adopt a uniform series or system of text-books for use in the elementary public schools of the state, and who shall serve without compensation. The governor shall be ex officio president of such commission and the superintendent of public instruction its secretary.

Rev., s. 4057; 1901, c. 1, ss. 1, 2, 7, 20; 1911, c. 118, s. 1(a).

5692. Term of office; powers; term of contracts. The commission shall maintain its organization during the five years of the continuance of the contract now in force. It may from time to time make any necessary regulations, not contrary to the provisions of this article, to secure the prompt distribution of the books herein provided for, and the prompt and faithful performance of all contracts. At any time within six months before the expiration of the contracts now in force for furnishing books to the public schools, the commission may advertise for new bids or proposals, as required by this article, and enter into such other contracts as they may deem best for the interest of the patrons of the public schools of the state. Any contract entered into or renewed shall be for the term of five years.

Rev., ss. 4058, 4059; 1901, c. 1, s. 14; 1911, c. 118, ss. 1(b), 1(c).

5693. Appointment of subcommission; compensation. It shall be the duty of the governor and the state superintendent of public instruction to appoint a subcommission of six members, to be selected from among the teachers or county superintendents actually engaged in school work in this state; and members of the subcommission actually serving shall be paid a per diem of four dollars per day during the time that they are actually engaged in such service, and in addition shall be repaid all money actually expended by them in payment of necessary expenses, to be paid out of the public funds of the state treasury, and they shall make out and swear to an itemized statement of such expenses.

Rev., s. 4063; 1907, c. 835, s. 1(b); 1911, c. 118, s. 1(f).

5694. Oath of subcommissioners. Each member of the subcommission, before entering upon the discharge of his duties, shall take and subscribe an oath to act honestly, conscientiously, and faithfully, and that he is not now, has not, within two years prior to his appointment, been agent or attorney for or in the employment of or interested in any book or publishing house, concern, or corporation making or proposing to make bids for the sale of books, pursuant to the provisions of this article, and that he will carefully and faithfully examine all books submitted, and make true report thereon, as herein directed and prescribed. Such oath shall be filed in the office of the secretary of state.

Rev., s. 4064; 1901, c. 1, s. 5.

5695. Examination of books by subcommission. To the subcommission shall be referred all books sent to the state text-book commission as specimen copies or samples upon which bids are to be based; and it shall be the duty of the subcommission, in executive session, to examine and report upon the merits of the books, irrespective of the price, taking into consideration the subject-matter of the books, their printing, their material, and their mechanical qualities, and their general suitability and desirability for the purposes for which they are desired and intended.

Rev., s. 4065; 1901, c. 1, s. 3.

5696. Report of subcommission. The subcommission shall report to the commission at such time as the commission shall direct, arranging each book in its class or division, and reporting books in the order of their merit, pointing out the merits and demerits of each, and indicating what book it recommends for adoption first, what book is its second choice, and its third choice, and so on, pursuing this plan with the books submitted upon each branch of study; and if the subcommission shall consider different books upon the same subject or of the same class or division of approximately even merit, all things being considered, it shall so report, and if it considers that any book offered is of such class as to make it inferior and not worthy of adoption, shall in its report so designate such book. In its report it shall make such recommendations and suggestions to the commission as it shall deem advisable and proper to make.

Rev., s. 4065; 1901, c. 1, s. 4.

5697. Opening and filing report. The report of the subcommission shall be kept secret and sealed up and delivered to the secretary of the commission, and shall not be opened up by any member of the commission until the commission and the subcommission shall meet in joint executive session to open and consider

the bids or proposals of publishers or others desiring to have books adopted by the commission, and when the commission shall have finished with the report it shall be filed and preserved in the office of the superintendent of public instruction and shall be open at all times for public inspection.

Rev., s. 4066; 1901, c. 1, ss. 4, 6; 1911, c. 118, s. 1(g).

5698. Character and requisites of books adopted. The uniform series of text-books to be selected by the commission and the subcommission shall include the following branches of study, to wit: Orthography, defining, reading, writing, drawing, arithmetic, geography, grammar, language lessons, history of North Carolina containing the constitution of the state, history of the United States containing the constitution of the United States, physiology, hygiene, nature and effect of alcoholic drinks and narcotics, elements of civil government, elements of agriculture. None of such text-books shall contain anything of a partisan or sectarian character, and all shall be written or printed in English.

Rev., s. 4060; 1901, c. 1, ss. 2, 8; 1911, c. 118, s. 1(d).

5699. Selection and adoption of books. The commission and subcommission in their selection and adoption of a uniform series of text-books shall consider the merits of the books, taking into consideration their subject-matter, the printing, binding, material, and mechanical quality, their general suitability and desirability for the purposes intended, and the price; and shall give due consideration to the report and recommendation of the subcommission. The text-book commission and the subcommission shall select and adopt such books as will, in their judgment, best accomplish the ends desired; and in case any books are deemed by them suitable for adoption and more desirable than other books of the same class or division submitted, and in case they consider the price at which such books are offered to be unreasonably high, and that the same should be offered at a smaller price, they are hereby authorized and directed to notify immediately the publishers of such books of their decision, and request such reduction in price as they deem reasonable or just; and if they shall agree on a price with such publishers they may adopt such books; but upon failure to agree upon price, they shall use their sound judgment and discretion as to the adoption of those or of other books deemed by them to be the next best in the list submitted.

Rev., s. 4067; 1901, c. 1, s. 6; 1911, c. 118, s. 1(h).

5700. Exclusive use of books adopted. The books adopted by the commission and subcommission as a uniform system of text-books shall be introduced and used as text-books, to the exclusion of all others, in all the free public schools in the state for a period of five years from the date of adoption, and it shall not be lawful for any school officer, director, or teacher to use any books upon the same branches other than those adopted by the commission. Nothing herein shall prevent the use of supplementary books, but such supplementary books shall not be used to the exclusion of the books prescribed or adopted under the provisions of this article; nor shall anything herein prevent the teaching in any school any branch higher or one more advanced than is embraced in the section prescribing the character and requisites of books to be adopted, nor the use of any book upon such higher branch of study, but such higher branch shall not be taught to the exclusion of the branches enumerated in the second preceding section.

Rev., s. 4061; 1901, c. 1, s. 16; 1911, c. 118, s. 1(e).

5701. Teacher allowing other books dismissed. If any teacher shall wilfully use or permit to be used in his school any text-book upon the branches embraced in this article, where the commission has adopted a book upon that branch, other than the one so adopted, the county board of education shall discharge and cancel the certificate of such teacher or school superintendent; but they may use or permit to be used such book or books as may be owned by the pupils of the school at the time of the adoption until such books are worn out, not exceeding one year from the date of adoption.

Rev., s. 4062; 1901, c. 1, s. 18.

5702. Provision for purchase when contractor fails to supply. Nothing herein shall prevent or prohibit the patrons of the public schools throughout the state from procuring books in the usual way, in case no contract shall be made or the contractor fails or refuses to furnish the books provided for in this article at the time required for their use in the respective schools.

Rev., s. 4062; 1901, c. 1, s. 17.

5703. Advertisement for bids. At any time within six months before the expiration of the now existing contracts the commission shall advertise, in such manner and for such a length of time and at such places as may be deemed advisable, that at a time and place fixed definitely in the advertisement sealed bids or proposals will be received from the publishers of school text-books for furnishing books to the public schools in the state of North Carolina, through agencies established by the publishers in the several counties, and in the several places in the counties of the state as may be provided for in such regulations as the commission may adopt and prescribe. The advertisement shall also state in substance the requirements of the section providing how bids are to be made and their contents, and shall reserve the right to the commission to reject all bids.

Rev., s. 4068; 1901, c. 1, ss. 1, 7, 11, 14; 1911, c. 118, s. 1(j).

5704. Form and contents of bids. The bids or proposals shall be for furnishing books for a period of five years, and no longer, and no bid for a longer period shall be considered. The bids shall state specifically and definitely the price at which books are to be furnished and the exchange price at which such books are to be furnished, and shall be accompanied by ten or more specimen copies of each and every book proposed to be furnished. It shall be required of each bidder to deposit with the treasurer of the state a sum of money, such as the commission may require, not less than five hundred nor more than twenty-five hundred dollars, according to the number of books each bidder may propose to supply, and such deposits shall be forfeited absolutely to the state if the bidder making the deposit of any sum shall fail or refuse to make and execute such contract and bond, as is hereinafter required, within such time as the commission shall require. All bids shall be sealed and deposited with the secretary of state, to be by him delivered to the commission when in executive session, for the purpose of considering the same, when they shall be opened in the presence of the commission. It shall be the duty of the secretary of state to carefully preserve in his office, as the standard of quality and excellence to be maintained in such book during

the continuance of the contracts for furnishing the same, the specimen or sample copies of all books which have been the basis of any contract, together with the original bid or proposal.

Rev., s. 4069; 1901, c. 1, ss. 7, 9, 10.

5705. Bids and proposals may be rejected. The commission shall have and reserve the right to reject any and all bids or proposals if of the opinion that any or all should for any reason be rejected; and in case it fail from among the bids or proposals submitted to select or adopt any books upon any of the branches prescribed by this article, may readvertise for sealed bids or proposals, under the same terms and conditions as before, and proceed with its investigations in all respects as in the first instance and as required by the terms and provisions of this article; and the commission shall have and reserve the same rights in cases of advertisement for and presentation of bids and proposals for manuscripts and unpublished books hereinafter provided for in this article.

Rev., s. 4070; 1901, c. 1, s. 11.

5706. Adoption of manuscripts and unprinted books. In the event that the commission rejects the bid for furnishing any book, or in case it fail to adopt any book of the classes required, it may advertise for sealed bids or proposals from authors or publishers of text-books who have manuscripts of books not yet published, for prices at which they will publish and furnish in book form such manuscripts for use in the public schools of North Carolina, proceeding in like manner as in bids for furnishing books; but the state itself shall not under any circumstances enter into any contract binding it to pay for the publication of any book, but in the contract with the owner of the manuscript it shall be provided that he shall pay the compensation to the publisher for the publication and putting in book form the manuscript, together with the cost and expense of copyrighting the same.

All such bids or proposals shall be accompanied with a cash deposit of from five hundred to twenty-five hundred dollars, as the commission may direct, and as heretofore provided in this article; and it is expressly provided that any person now doing business or proposing to do business in this state shall have the right to bid for the contract to be awarded hereunder in manner as follows: In response to the advertisement such person may submit his written bid to edit or have edited, published, and supplied for use in the public schools in this state any book provided for hereunder. Instead of filing with the bid or proposal a sample or specimen or copy of each book proposed to be furnished, he may exhibit to the commission, in manuscript or printed form, the matter proposed to be incorporated in any book, together with such a description and illustration of the form and style thereof as will be fully intelligible and satisfactory to the commission, or he may submit a book the equal of which in every way he proposes to furnish, and he shall accompany his bid or proposal with the cash deposit hereinbefore required. All such books and manuscripts shall be examined and reported upon by the subcommission before being adopted.

Rev., s. 4071; 1901, c. 1, s. 11.

5707. Commission to deliver sample books to subcommission. It shall be the duty of the commission to meet at the time and place designated in the advertise-

ment and take out the sample or specimen copies submitted, upon which the bids are based, and refer and submit them to the subcommission, as provided for and directed in this article, with instructions to the subcommission to report at a time specified, with the classification and recommendation, as provided in this article.

Rev., s. 4072; 1901, c. 1, s. 8.

5708. Adoption of books. When the report of the subcommission is submitted it shall be the duty of the commission and the subcommission to meet in joint executive session to open and examine all sealed proposals submitted and received in pursuance of the notice or advertisement provided for in this article. It shall be the duty of the commission and the subcommission to examine and consider all such bids or proposals, together with the report and recommendation of the subcommission, and determine, in the manner provided in this article, what books, upon the branches hereinabove mentioned, shall be selected for adoption, taking into consideration the size, quality as to the subject-matter, material, printing, binding, and the mechanical execution and price, and the general suitability for the purpose desired and intended.

Rev., s. 4073; 1901, c. 1, s. 8; 1911, c. 118, s. 1(k).

5709. Award of contract. After the selection or adoption shall have been made, the commission shall award the contracts, and shall by registered letter notify the publishers or proposers to whom the contracts have been awarded. But the commission shall not, in any case, contract with any person for the use of any book which shall be sold to patrons for use in any public school in the state in excess of the price at which such book is to be furnished by such person, under contract, to any state, county, or school district in the United States, under like conditions as those prevailing in this state and under this article.

Rev., s. 4073; 1901, c. 1, s. 9.

5710. Execution of contract. Upon the awarding of the contracts it shall be the duty of the attorney-general to prepare the same in accordance with the terms and provisions of this article. On behalf of the state the contracts shall be executed by the governor and secretary of state, and the seal of the state shall be set thereto. All such contracts shall be executed in triplicate, of which one shall be kept by the secretary of the commission, one shall be filed in the office of the secretary of state, and one shall be retained by the contracting party. All contracts entered into or renewed under the provisions of this article shall be for the term of five years.

Rev., s. 4074; 1901, c. 1, ss. 8, 14.

5711. Stipulations in contract. It shall be stipulated in each contract that the contractor has never furnished, and is not now furnishing under contract, any state, county, or school district in the United States where like conditions prevail as are then prevailing in this state and under this article, the same books as are embraced in the contract at a price below that stipulated in the contract; and the commission is hereby authorized and directed, at any time that it may find that any books have been sold at a lower price under contract to any state, county, or school district, to sue upon the bond of the contractor and recover the difference

between the contract price and the lower price for which books have been sold. It shall also be stipulated in the contract that the contractor shall take up school books in use in this state at the date of such contract, and receive the same in exchange for new books, allowing a price for such old books not less than fifty per cent of the contract price of the new books.

Rev., s. 4075; 1901, c. 1, ss. 9, 10.

5712. Liability of state on contract. It shall always be a part of the terms and conditions of every contract made in pursuance of this article that the state of North Carolina shall not be liable to any contractor in any manner for any sum whatever, but all such contractors shall receive their pay and compensation solely and exclusively from the proceeds of the sale of books, as provided for in this article.

Rev., s. 4076; 1901, c. 1, s. 10.

5713. Power to alter contracts. Nothing in this article shall prevent the commission and any contractor agreeing thereto from in any manner changing or altering any contract, if four members of the commission shall agree to the change and think it advisable and for the best interest of the public schools of the state.

Rev., s. 4077; 1901, c. 1, s. 9.

5714. Books must come up to sample. The books furnished under any contract shall, at all times during the existence of the contract, in all respects be equal to the specimen or sample copies furnished with the bid.

Rev., s. 4078; 1901, c. 1, s. 9.

5715. Bond of contractor. At the time of the execution of the contract the contractor shall enter into a bond in the sum of not less than ten thousand dollars, payable to the state of North Carolina, the amount of the bond within such limits to be fixed by the commission, conditioned for the faithful, honest, and exact performance of his contract, and shall further provide for the payment of reasonable attorneys' fees in case of recovery in any suit upon the same, with three or more good and solvent sureties, actual citizens and residents of this state, or any guaranty company authorized to do business in this state may become the surety on such bond; and it shall be the duty of the attorney-general to prepare and approve such bonds. The commission may at any time, by giving thirty days notice, require additional security or additional bond.

Rev., s. 4079; 1901, c. 1, ss. 8, 9.

5716. Action on the bond. 1. *Suit by commission.* In case any contractor shall fail to execute specifically the terms and provisions of his contract, the commission is hereby empowered and directed to bring an action upon the bond of such contractor for the recovery of any and all damages. Such action shall be in the name of the state of North Carolina, and the recovery shall be for the benefit of the public school fund of the state and counties, and when collected shall be placed in the treasury of the school fund. The bond shall not be exhausted by a single recovery, but may be sued on from time to time until the full amount thereof shall be recovered.

2. *Suit by county board.* And it is expressly provided that should any party contracting to furnish books, as provided for in this article, fail to furnish them or otherwise break his contract, in addition to the right of the state to sue on the bond hereinabove required, the chairman of the county board of education or any member thereof may sue in the name of the state in the courts of the state having jurisdiction, and recover on such bond the full value of the books so failed to be furnished, for the use and benefit of the school fund of the county. In all such cases service of process may be made on any agent or contractor in the county, or if no agent is in the county, then service may be made on any agent in charge of any depository, and such service shall be and stand in the place of service on the defendant contractor.

Rev., s. 4080; 1901, c. 1, ss. 8, 9, 13.

5717. Deposits by bidders; return and forfeiture. When any person shall have been awarded a contract, and shall have given the bond required, the commission, through its secretary, shall so inform the treasurer of the state, who shall then return to such contractor the cash deposit made by him; and the commission, through its secretary, shall inform the treasurer of the names of the unsuccessful bidders or proposers, and the treasurer shall, upon the receipt of this notice, return to them the amounts deposited by them in cash at the time of the submission of their bids. Should any person fail or refuse to execute a contract and give the bond, as required by this article, within thirty days after the awarding of the contract to him and the mailing of the registered letter containing notice thereof, which shall be sufficient evidence that the notice was given and received, the cash deposit shall be deemed and is hereby declared forfeited to the state of North Carolina, and it shall be the duty of the treasurer to place such cash deposit in the treasury of the state, to the credit of the school fund.

Rev., s. 4081; 1901, c. 1, s. 8.

5718. Prices to be printed on books. It shall be the duty of all contractors to print plainly on the back of each book the contract price, as well as the exchange price at which it is agreed to be furnished, but the books submitted as sample or specimen copies with the original bid shall not have the price printed on them before they are submitted to the subcommission; and all books shall be sold to the consumer at the retail contract price, and on each book shall be printed the following: "The price fixed hereon is fixed by state contract, and any deviation therefrom should be reported to your county superintendent of public instruction or to the state superintendent at Raleigh."

Rev., s. 4082; 1901, c. 1, ss. 9, 13, 19.

5719. Selling books at greater than contract price misdemeanor. If any dealer, clerk, or agent shall sell any book adopted by the text-book commission for a greater price than the contract price he shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding fifty dollars.

Rev., s. 3834; 1901, c. 1, s. 19.

5720. Distributing agencies and depositories; penalty failure to have. There shall be maintained in each county in the state not less than one and as many more agencies as the commission, upon recommendation of the county board of

education, shall order, to be located at such points as the county board may recommend, for the distribution of books to the patrons; or the contractor shall be permitted to make arrangements with merchants or others for the handling and distribution of the books. Parties living in the country where no agency has been established or no arrangement made for the distribution may order the same from one of the contractors, who shall deliver any book so ordered to the person ordering, to his postoffice address, freight, express, postage, or other charges prepaid, at the retail contract price, if the price of the books so ordered shall be paid in advance.

The contractors shall maintain one or more joint state depositories at some convenient distributing point or points in the state, at which shall be kept at all times an ample supply of all adopted books for the convenient and expeditious supply of books to the local depositories in the various counties of the state. Whenever demanded and certified by the county superintendent of public instruction of any county to be necessary to secure and keep on hand an ample supply of books at any local depository, the contractors shall furnish books to such local depository on consignment.

And every contractor shall be required to keep on hand at all times at every established agency in every county an ample supply of books to meet all demands of patrons and purchasers, and upon failure to do so, or upon failure to establish agencies when ordered to do so by the commission, as directed herein, the contractor shall be liable to a penalty of five hundred dollars for each and every failure to comply with the provisions of this section, to be sued for by the attorney-general in the name of the state in the superior court of Wake county, for the benefit of the school fund of the county injured by such failure; and if any contractor against whom judgment shall be obtained for such penalty shall fail to pay the same within thirty days after the docketing thereof, he shall forfeit his contract, and the commission shall so declare, and shall thereupon proceed to make a new contract for books with some other contractor. The county superintendent shall notify the contractors annually of the date of opening the public schools at least thirty days before they open.

Rev., s. 4083; 1901, c. 1, s. 13; 1903, c. 691, ss. 1, 2; 1911, c. 118, s. 1 (1).

5721. Contract proclaimed by governor; notices by state superintendent. As soon as the commission shall have entered into a contract for the furnishing or supplying of books for use in public schools, it shall be the duty of the governor to issue his proclamation announcing such fact to the people of the state. And as soon thereafter as practicable the state superintendent shall issue a circular letter to each county superintendent in the state and to such others as he may desire, which letter shall contain the list of books adopted, the prices, location of agencies, and method of distribution, and such other information as he may deem necessary.

Rev., s. 4084; 1901, c. 1, ss. 12, 15.

ART. 42. HIGH SCHOOL TEXT-BOOKS

5722. Unit of adoption the county. The unit for the adoption of high school text-books shall be the county.

1919, c. 201, s. 1.

5723. State superintendent to prepare list of approved text-books. The state superintendent of public instruction shall, within one year from the eighth day of March, nineteen hundred and nineteen, have prepared a list of approved text-books for use in all public high schools of the state, from which list adoptions for each county in each subject of study taught in the high schools of the county shall be made in the manner prescribed in this article; and the state superintendent of public instruction shall have the state list of approved high school text-books printed, showing the wholesale, retail, and exchange prices as agreed upon by contract with the publishers of approved books under the provisions of this article.

1919, c. 201, s. 2.

5724. County committee to recommend books. The county board of education of each county shall, upon recommendation of the county committee on high school text-books, every four years, except as hereafter provided, adopt a county list which shall be made up from the state list of approved books provided for in the preceding section; and the said committee to select high school text-books for each county shall be composed of the county superintendent of public instruction, the superintendent of the largest city or town school system of the county, and three high school principals or teachers chosen from the different high schools of the county, to be selected jointly by the two above mentioned county and city superintendents: Provided, that in a county where such a committee cannot be secured according to the manner provided above, the state high school inspector shall recommend to the county board of education of said county the high school books to be used in said county, and the county board of education shall adopt the list of books so recommended; and the county adoptions of high school text-books under this article shall be limited to the state list of approved high school text-books to be selected under the direction of the state superintendent of public instruction and published by him as provided in the preceding section: Provided, that nothing in this article shall be so construed as to prevent the county committee on high school text-books from recommending the use of, and the county board of education from adopting, more than one book in a subject for use in the different types of high schools that may require books of greater or less difficulty, nor shall any high school be prevented from using necessary supplementary books.

1919, c. 201, s. 3.

5725. Publishers to submit samples with prices to state superintendent. The state superintendent of public instruction shall give notice to the publishers of high school text-books in such manner as he may choose, that each publisher wishing to have any book adopted for use in the high schools of North Carolina shall submit six copies of the same (of his regular, standard edition) to the state superintendent of public instruction, together with a statement in writing of the price at which the said publisher will sell such book to properly constituted high school authorities in the state. The publisher shall quote to the state superintendent of public instruction the wholesale, retail, and exchange prices of each book he submits, which prices shall not be higher than are charged for the same book in any other state adopting high school text-books under a plan similar to that prescribed in this article.

1919, c. 201, s. 4 (1).

5726. State committee on high school text-books; duties, reports to state superintendent. The state superintendent of public instruction shall appoint a state committee on high school text-books, consisting of five members, who shall serve without pay except reimbursement out of the state treasury upon the requisition of the state superintendent of public instruction for actual expenses incurred by attendance upon meetings of the committee that may be called by, or under the direction of, the state superintendent of public instruction. It shall be the duty of the state committee on high school text-books to make an examination of each book submitted by any publisher, under the provisions of this article, with a view to determining whether or not the contents, quality, and price of said book are such as to make it suitable and desirable for use in public high schools of this state; and the said state committee on high school text-books shall, every four years, except as herein otherwise provided, submit to the state superintendent of public instruction, on or before the first day of January of each year within which county adoptions are to be made, a report of its findings, with recommendations as to the books that shall be placed on the state approved list, which list shall constitute the state adopted list for a period of four years, except as herein otherwise provided.

1919, c. 201, s. 4 (2).

5727. State superintendent approves list. All books recommended for use in the public high schools of the state by the state committee on high school text-books that meet with the approval of the state superintendent of public instruction shall then be placed upon the state list of approved text-books at the prices agreed upon under contract entered into by him with the publisher of approved high school text-books.

1919, c. 201, s. 4 (3).

5728. State superintendent contracts with publishers. The state superintendent of public instruction shall then enter into a contract with every publisher having books on the state list of approved high school text-books to sell such books to the properly constituted authorities throughout the state in the manner provided for in this article.

1919, c. 201, s. 4 (4).

5729. Bond of publishers. Each publisher having any book on the state list of approved books shall file with the state superintendent of public instruction a bond payable to the state of North Carolina, with some surety company authorized to do business in the state as surety thereon, in the sum to be determined by the state superintendent of public instruction, said sum being not less than five hundred dollars and not more than twenty-five hundred dollars, according to the number of books filed; the bond to be conditioned as follows:

1. That the publisher will furnish any of the books at the price and under the conditions listed in his contract with the state superintendent of public instruction to the duly constituted high school authorities of the state during the time said contract is continued in force.

2. That the price of any book or books shall not exceed the lowest price the publisher has made elsewhere in the United States under a plan similar to that

prescribed in this article, and that he will maintain said price uniformly throughout the state on the books filed and approved under the provisions of this article.

3. That the publisher will reduce such prices automatically to this state whenever reductions are made elsewhere in the United States, so that at no time shall any book so filed and approved be sold to the high school authorities in the state at a higher net price than is received for any such book elsewhere in the United States, and that upon failure or refusal of any publisher to make such a reduction, his contract for such book or books shall become null and void, and his bond forfeited in whole or in part as may be determined to be just and equitable by the state superintendent of public instruction and the attorney-general.

4. That all books on the state list of approved high school text-books offered for sale, adoption, or exchange in the state shall be in equal quality to those filed with the state superintendent of public instruction as regards paper, binding, printing, illustration, subject-matter, and all other particulars that may affect the value of such books.

5. That the publishers shall not enter into any understanding, agreement, or combination to control the prices or restrict competition on the sale of such high school text-books in this state.

6. That such bond shall be approved by the attorney-general, and shall continue in force for a period of not less than five years and not more than six years without renewal after its filing, at or before the expiration of which period a new bond shall be given or the right of selling text-books on the state list of approved high school text-books in the state shall be forfeited.

7. That if any publisher shall comply with the foregoing provisions of this article, and then fail or refuse to furnish any book or books to the duly constituted high school authorities of any county upon the terms herein provided, said school authorities shall at once notify the state superintendent of public instruction of such failure or refusal, who shall at once cause an investigation of such charge to be made.

If the state superintendent shall find such charge to be true he shall at once notify such publisher and notify the superintendent of schools of each county and of each city whose schools are operated under special charter, that such book or books shall not thereafter be adopted or purchased by any of the public high school authorities of the state, and said publisher shall forfeit and pay to the state such a part of his bond as may be determined to be equitable and just by the state superintendent of public instruction and attorney-general, to be recovered in the name of the state in an action to be brought by the attorney-general in any proper court, the amount when collected to be paid into the treasury to the credit of the state public school fund.

1919, c. 201, s. 4 (5).

5730. Text-books adopted for four years; exceptions. The county board of education of each county at a regular meeting held between the first day of February and the first day of June every four years, beginning with the year one thousand nine hundred and twenty, shall act upon the recommendation of the county committee on high school text-books, and shall adopt a list of high

school text-books recommended by the said committee, under the provisions of this article, to be used in the county for the next four years; and when such county adoption shall have been made, no basal book or books, except those on the list adopted for use in the public high schools of the county for the next four years period from the time of an adoption, shall be used by any public high school of the county: Provided, that in adopting text-books of history and science, the committee may adopt and the state superintendent of public instruction may make contracts for a period of two years.

1919, c. 201, s. 5.

5731. Local depositories to sell books; commission allowed. In order to facilitate distribution, sale, and exchange of high school text-books adopted under the provisions of this article, in each county the county board of education shall provide for the handling of such books through such local depositories or agencies in the county as it may deem advisable and necessary; and such local depositories or agencies shall be responsible to the county board of education, through whom all orders to the publishers for high school text-books, under the provisions of this article, shall be made, except as is hereinafter provided; and said depositories or agencies may be allowed a commission on the sale of high school text-books not to exceed fifteen per cent of the wholesale price of the books as agreed upon by contract entered into by the state superintendent of public instruction with the publishers of approved high school text-books; and any depository or agency that shall charge a higher price than fifteen per cent in addition to the wholesale contract price shall be deprived of the right to handle any high school text-books adopted under the provisions of this article. Nothing in this article shall be construed to prevent the high school officials of any school or school system operated under a special charter from placing their orders directly with the publishers.

1919, c. 201, s. 6.

5732. Students removing from county may sell books; resale. When a pupil in any public high school of one county removes to another county and enters a high school in that county and has regularly adopted high school text-books not used in the high schools of such other county, and wishes to dispose of them, the county board of education in the county from which he removes, if requested to do so, shall purchase through any of its depositories or agencies such books at a fair valuation thereof, depending on the condition of the books, and shall provide for reselling them to other pupils at a profit not exceeding fifteen per cent.

1919, c. 201, s. 7.

5733. State superintendent may make additional rules if necessary. The state superintendent of public instruction may make such additional rules and regulations as he may deem necessary to carry out more effectively the provisions of this article and to facilitate the handling of high school text-books: Provided, that all such rules and regulations as he may make shall be in conformity with the provisions of this article.

1919, c. 201, s. 8.

5734. Only disinterested persons to act in selection. It shall be a misdemeanor for any person to serve in any capacity in the selection of text-books for approved lists who is connected in any way with the production or sale of high school text-books.

1919, c. 201, s. 9.

ART. 43. FURNISHING TEXT-BOOKS BY SCHOOL BOARDS

5735. Rental of text-books. The county board of education or the board of trustees of any local tax district or special chartered district is hereby authorized to provide depositories for public school text-books and to rent such books to the children of any school district at a rental price not to exceed fifty per cent of the publisher's contract price with the state; and wherever books are rented that have not been contracted for by the state, the rental price shall not exceed fifty per cent of the publisher's list price.

1919, c. 134, s. 1.

5736. County and local boards to make rules; to use incidental expense fund. The county board of education or the board of trustees of any local tax district or special chartered district is hereby authorized to make all needful rules and regulations governing the rental of public school text-books and to apply any funds of the incidental expense fund remaining to the credit of the county or the special chartered district to the purpose of this article: Provided, that before any amount is appropriated from this fund for these purposes provision shall be made for all needful expenses of said schools.

1919, c. 134, s. 2.

5737. Books for indigent children. County boards of education or the board of trustees of any local tax district may set aside an amount not to exceed \$100 from the incidental expense fund to be used in purchasing public school text-books, to be used in the manner designated, namely, that when it shall appear that the education of any child is limited because of the inability of said child to purchase necessary text-books or to pay the rental price, said board or boards may loan free of cost all necessary books to any such child during the term of the school, subject to rules and regulations by the county board of education or the board of trustees of any local tax district or special chartered school, and approved by the state superintendent of public instruction.

1919, c. 134, s. 3.

5738. Limitation as to funds; effect of article. No contract made for books or for service in executing the provisions of this article shall make any part of the state public school fund liable save that specified in the two preceding sections, nor shall any section of this article be construed so as to abridge in any way the text-book system now operated by any school committee or local board.

1919, c. 134, s. 4.

5739. State superintendent to inform local school authorities. The state superintendent of public instruction is hereby requested to inform superintendents of county and all local tax schools of the provisions of this article.

1919, c. 134, s. 5.

SUBCHAPTER VIII. SCHOOL CENSUS AND HEALTH

ART. 44. SCHOOL CENSUS

5740. School committee to report annually to county superintendent; contents of reports. The school committee of each township or district must furnish annually to the county superintendent of schools a census report of all the children in the township or district of school age, by name, age, date of birth, sex, and race, and the names of their parents or guardians.

The census report shall show also the number of children of compulsory attendance age, and the committee shall furnish the attendance officer a separate list of all children subject to compulsory attendance, containing the name, age, date of birth, sex, and race of each, and the names of their parents or guardians.

There shall also be reported by race and sex the number and names of all persons between the ages of twelve and twenty-one who cannot read and write, and the number and names, by race and sex, of all persons over twenty-one years of age who cannot read and write.

There shall also be reported, by race and sex, the number and names of deaf and dumb and blind children between the ages of six and twenty-one years of age, and the names and addresses of their parents or guardians.

Rev., s. 4148; 1911, c. 135, s. 1 (d); 1915, c. 236, s. 1 (f); 1919, c. 254, s. 13.

5741. County superintendent to furnish blanks; time for returning report. The blanks upon which the reports of the committee are to be made shall be furnished to the various committees by the county superintendent at least two weeks prior to the beginning of the school term in each district, and the report, duly sworn to by the person taking the census, and signed and approved by the members of the committee, shall be returned to the county superintendent on or before the first day of the school term of each school year.

Rev., s. 4148; 1911, c. 135, s. 1(d); 1915, c. 236, s. 1(f).

5742. Committee to designate census taker. The school committee may designate one of the teachers, or some other competent person in each school district, to take the census.

Rev., s. 4148; 1911, c. 135, s. 1(d); 1915, c. 236, s. 1(f).

5743. Compensation of census taker. The committeemen, or other person taking the census, shall be allowed a sum not exceeding three cents per name for all names reported between the ages of six and twenty-one.

Rev., s. 4148; 1911, c. 135, s. 1(d); 1915, c. 236, s. 1(f).

5744. Committee to furnish copy to teacher; teacher to record. The committee shall furnish to the teacher at the opening of the school year a copy of the census furnished to the county superintendent, which shall be recorded by the teacher in the school register. The census record entered in the register shall show the name, age, date of birth, and sex of each child of school age in that district, together with the names and addresses of the parents or guardians.

Rev., s. 4148; 1911, c. 135, s. 1(d); 1915, c. 236, s. 1(f); 1919, c. 254, s. 13.

5745. Committee failing to comply with provisions of article removed. Any committee failing to comply with the provisions of this article, without just cause, shall be subject to removal.

Rev., s. 4148; 1911, c. 135, s. 1(d); 1915, c. 236, s. 1(f).

5746. Making false returns misdemeanor. If any person who is a member of the school committee of any district, as such, shall knowingly and wilfully take false or inaccurate census, or make a false or inaccurate return or report to the county superintendent of public instruction of the number of children in his district between the ages of six and twenty-one, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined and imprisoned at the discretion of the court.

Rev., s. 3836; 1889, c. 353.

ART. 45. PHYSICAL EXAMINATION OF PUPILS

5747. State board of health and state superintendent to make rules for physical examination. It shall be the duty of the state board of health and the state superintendent of public instruction to prepare and distribute to the teachers in all public schools of the state instructions and rules and regulations for the physical examination of pupils attending the public schools.

1919, c. 192, s. 1.

5748. Teachers to make examinations; state covered every three years. Upon receipt of such instructions, rules and regulations, it shall be the duty of every teacher in the public schools to make a physical examination of every child attending the school and enter on cards and official forms furnished by the state board of health a record of such examination. The examination shall be made at the time directed by the state board of health and the state superintendent of public instruction, but every child shall be examined at least once every three years. The state board of health and the state superintendent of public instruction shall so arrange the work as to cover the entire state once every three years.

1919, c. 192, s. 2.

5749. Record cards transmitted to state board of health; punishment for failure. The teacher shall transmit the record cards and other blank forms made by him or her to the North Carolina state board of health, and if any teacher fails within sixty days, after receiving the aforesaid forms and requests for examination and report, to make such examination and report as herein provided, the teacher shall be guilty of a misdemeanor and subject to a fine of not less than ten dollars nor more than fifty dollars or thirty days in prison.

1919, c. 192, s. 3.

5750. Disposition of records; reexamination of pupils. The North Carolina state board of health shall have the records filed by the teacher carefully studied and classified, and shall notify the parent or guardian of every child whose card shows a serious physical defect to bring such child before an agent of the state board of health on some day designated by the state board of health between the hours of nine a. m. and five p. m. for the purpose of having said child

thoroughly examined; and if, upon receipt of such notice, any parent or guardian shall fail or refuse to bring said child before the agent of the state board of health without good cause shown, he shall be guilty of a misdemeanor, and shall be fined not less than five dollars nor more than fifty dollars or imprisoned not more than thirty days: Provided, that the distance the child must be carried shall not exceed ten miles.

No pupil or minor shall be compelled to submit to medical examination or treatment whose parent or guardian objects to the same. Such objection may be made by a written and signed statement delivered to the pupil's teacher or to any person who might conduct such examination or treatment in the absence of such objection.

1919, c. 192, s. 4.

5751. Treatment of pupils; expenses. Within thirty days after the completion of the examination of the children by the agent of the state board of health and after written statement of the proper authority hereinafter designated, a sum not exceeding ten dollars per hundred children enrolled in the county or city shall be paid to the state board of health to be used exclusively for the purpose of treating school children for defects other than dental, the same to be paid by the county commissioners of the county, and in cities or towns having a separate school system, to be paid by the city manager, city council, city board of aldermen, or city commissioners. Any funds so paid and not needed in enforcing the provisions of this article shall be returned to the county or city from which it was received.

1919, c. 192, s. 5.

5752. Free dental treatment; appropriation. For the purpose of providing free dental treatment for as many children as possible each year, and to aid the state board of health in making the examinations as provided for in this article, a special appropriation not to exceed fifty thousand dollars per annum shall be set aside from the state public school fund, and shall be paid by the treasurer of the state of North Carolina on properly signed requisition forms to the treasurer of the North Carolina state board of health.

1919, cc. 102, s. 14, 192, s. 6.

ART. 46. SCHOOL PRIVIES

5753. County board to provide privies. In each county the county board of education shall provide, under rules and regulations to be made by the state board of health and approved by the state superintendent of public instruction, two privies at each public schoolhouse, one for boys and one for girls.

1919, c. 213, s. 1.

5754. Payment for privies. Privies shall be considered an essential and necessary part of the equipment of each public school, and may be paid for in the same manner as desks and other essential equipment of the school.

1919, c. 213, s. 1.

5755. Time allowed for installation. At least twenty-five per cent of the schools of each county shall have the privies herein required provided on or

before September first, one thousand nine hundred and nineteen, a second twenty-five per cent on or before September first, one thousand nine hundred and twenty, a third twenty-five per cent on or before September first, one thousand nine hundred and twenty-one, and the balance on or before September first, one thousand nine hundred and twenty-two.

1919, c. 213, s. 1.

5756. Failure to provide privies a misdemeanor. The county superintendent of public instruction and the county board of education of each county are hereby charged with the execution of the provisions of this article, and failure to fully and completely execute it shall be a misdemeanor and subject the several members of the board and the county superintendent to a fine or imprisonment, or both, in the discretion of the court.

1919, c. 213, s. 1.

5757. Privies to be kept sanitary. The local district or township committeemen are hereby required to keep the privies provided for in this article in a sanitary condition, and shall be governed in this particular by rules and regulations to be prepared by the state board of health with the approval of the state superintendent of public instruction.

Failure of the committeemen to keep privies at public schoolhouses in proper sanitary condition under the rules and regulations aforesaid shall be considered a misdemeanor and shall subject them severally and personally to a fine or imprisonment, or both, in the discretion of the court.

1919, c. 213, s. 2.

SUBCHAPTER IX. COMPULSORY ATTENDANCE ON SCHOOLS

ART. 47. GENERAL COMPULSORY ATTENDANCE LAW

5758. Parent or guardian required to keep child in school; exemptions. Every parent, guardian, or other person in the state having charge or control of a child between the ages of eight and fourteen years shall cause such child to attend school continuously for a period equal to the time which the public school in the district in which the child resides shall be in session. The principal, superintendent, or teacher who is in charge of such school shall have the right to excuse the child from temporary attendance on account of sickness or distance of residence from the school, or other unavoidable cause which does not constitute truancy as defined by the state board of education.

1919, c. 100, s. 1.

5759. State board of education to make rules and regulations; method of enforcement. It shall be the duty of the state board of education to formulate such rules and regulations as may be necessary for the proper enforcement of the provisions of this article. The board shall prescribe what shall constitute truancy, what causes may constitute legitimate excuses for temporary non-attendance due to physical or mental inability to attend, and under what circumstances teachers, principals, or superintendent may excuse pupils for non-attendance due to immediate demands of the farm or the home in certain seasons

of the year in the several sections of the state. It shall be the duty of all school officials to carry out such instructions from the state board of education, and any school official failing to carry out such instructions shall be guilty of a misdemeanor: Provided, that the preceding section shall not be in force in any city or county that has a higher compulsory attendance law now in force than that provided herein; but in any such case it shall be the duty of the state board of education to investigate the same and decide that any such law now in force has a higher compulsory attendance feature than that provided by this article: Provided, that wherever any district is without adequate buildings for the proper enforcement of this article the county boards of education may be allowed not more than two years from July the first, one thousand nine hundred and nineteen, to make full and ample provisions in every district.

1919, c. 100, s. 2 (a).

5760. Attendance officers; reports; prosecutions. The state superintendent of public instruction shall prepare such rules of procedure and furnish such blanks for teachers and other school officials as may be necessary for reporting each case of truancy or lack of attendance to the chief attendance officer referred to in this article. Such rules shall provide, among other things, for a notification in writing to the person responsible for the nonattendance of any child, that the case is to be reported to the chief attendance officer of the county unless the law is immediately complied with. County boards of education and governing bodies of city schools shall have the right to appoint town or district attendance officers when deemed by them necessary, to assist in carrying out the provisions of this article, and the rules and instructions which may be promulgated by the state superintendent of public instruction. But in every case in which it becomes necessary to prosecute for nonattendance the case shall be referred to the chief attendance officer of the county for further action: Provided, that in towns or cities having special attendance officers paid out of town or city funds said officers shall have full authority to prosecute for violations of this article.

1919, c. 100, s. 4.

NOTE.—The county superintendent of public welfare is chief attendance officer, s. 5017.

5761. Violation of law; penalty. Any parent, guardian, or other person violating the provisions of this article shall be guilty of a misdemeanor, and upon conviction shall be liable to a fine of not less than five dollars nor more than twenty-five dollars, and upon failure or refusal to pay such fine, the said parent, guardian, or other person shall be imprisoned not exceeding thirty days in the county jail.

1919, c. 100, s. 2.

5762. Investigation and prosecution by county superintendent and attendance officer. The county superintendent of public welfare or chief school attendance officer or truant officer provided for by law shall investigate and prosecute all violations of the provisions of this article.

1919, c. 100, s. 3.

ART. 48. COMPULSORY ATTENDANCE OF INDIGENT CHILDREN

5763. Investigation as to indigency of child. If affidavit shall be made by the parent of a child or by any other person that any child between the ages of eight and fourteen years is not able to attend school by reason of necessity to work or labor for the support of itself or the support of the family, then the attendance officer shall diligently inquire into the matter and bring it to the attention of some court allowed by law to act as a juvenile court, and said court shall proceed to find whether as a matter of fact such parents, or persons standing in loco parentis, are unable to send said child to school for the term of compulsory attendance for the reasons given. If the court shall find, after careful investigation, that the parents have made or are making a bona fide effort to comply with the compulsory attendance act, and by reason of illness, lack of earning capacity, or any other cause which the court may deem valid and sufficient, are unable to send said child to school, then the court shall find and state what help is needed for the family to enable the attendance law to be complied with. The court shall transmit its findings to the county board of education of the county or, in cities, to city school board in which the case may arise.

1919, c. 150.

5764. Aid to indigent child. The county board of education shall in its discretion order aid to be given the family from the incidental expense fund of the county school budget to an extent not to exceed ten dollars per month for such child during the continuance of the compulsory term; and shall at the same time require said officer to see that the money is used for the purpose for which it is appropriated and to report from time to time whether it shall be continued or withdrawn. And the county board of education is hereby authorized in making out the county budget to provide a sum to meet the provisions of this article.

1919, c. 150, s. 1.

ART. 49. COMPULSORY ATTENDANCE OF DEAF CHILDREN

5765. Deaf children to attend school; age limits; minimum attendance. Every deaf child of sound mind in North Carolina shall attend a school for the deaf at least five school terms of nine months each, between the ages of eight and fifteen years. The parents, guardians, or custodians of such child or children between the ages of eight and fifteen years shall send, or cause to be sent, such child or children to some school for the instruction of the deaf, at least five terms or sessions of nine months each, between said ages.

1907, c. 1007, ss. 1, 2; 1915, c. 14.

5766. Parents, etc., failing to send to school guilty of misdemeanor; provisos. The parents, guardians, or custodians of any deaf children between the ages of eight and fifteen years failing to send such deaf child or children to some school for instruction, as provided in this article, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, at the discretion of the court, for each year said deaf child is kept out of school, between the ages herein provided: Provided, (1) that parents, guardians, or custodians may elect two years between

the ages of eight and fifteen years that a deaf child or children may remain out of school; and (2) that this section shall not apply to or be enforced against the parent, guardian, or custodian of any deaf child until such time as the superintendent of any school for the instruction of the deaf, by and with the approval of the executive committee of such institution, shall in his and their discretion serve written notice on such parent, guardian, or custodian, directing that such child be sent to the institution whereof they have charge.

1907, c. 1007, s. 3; 1915, c. 14.

5767. Duties of census taker and county superintendent. It shall be the duty of the school census taker to report name, age, and sex of each deaf child in his district, and name of parents, guardians, or custodians and their postoffice address to the county superintendent of education, who shall send said report of names and addresses to the superintendent of the North Carolina school for the deaf, located at Morganton, N. C. Upon the failure of the census taker or county superintendent to make such reports he shall be fined five dollars for each white deaf child not so reported.

1907, c. 1007, s. 4; 1915, c. 14.

5768. Fines to school fund. All fines provided in this article, when collected, shall be paid to the public school fund of the county in which such deaf child lives.

1907, c. 1007, s. 5.

ART. 50. COMPULSORY ATTENDANCE OF BLIND CHILDREN

5769. Blind children to attend school; age limits; minimum attendance. Every blind child of sound mind and body living in the state of North Carolina shall attend the state school for the blind and the deaf, at Raleigh, or some similar school for the education of the blind, for a term of nine months each year, between the ages of seven and seventeen years. The term "blind child" is to be construed as meaning any child whose sight is so defective as to make it impracticable to obtain an education in schools for the seeing. The parents, guardians, or custodians of any blind child or children between the ages of seven and seventeen years shall send, or cause to be sent, such child or children to some school for the instruction of the blind at least eight sessions of nine months each.

Ex. Sess. 1908, c. 141, ss. 1, 2.

5770. Parents, etc., failing to send guilty of misdemeanor; provisos. The parents, guardians, or custodians of any blind child or children between the ages of seven and seventeen years failing to send such child or children to some school for the instruction of the blind shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, at the discretion of the court, for each year that such child or children shall be kept out of school between the ages specified: Provided, (1) that this section shall not be enforced against the parents, guardians, or custodians of any blind child until such time as the authorities of some school for the instruction of the blind shall serve written notice on such parents, guardians, or custodians, directing that such child be sent to the school whereof

they have charge; and (2) that the authorities of the state school for the blind and the deaf shall not be compelled to retain in their custody or under their instruction any incorrigible person or persons of confirmed immoral habits.

Ex. Sess. 1908, c. 141, s. 3.

5771. Duties of census taker and county superintendent. It shall be the duty of the school census taker to report name, age, and sex of each blind child in his district, and names of parents, guardians, or custodians, and their postoffice addresses, to the county superintendent of education, who shall send said report of names and addresses to the superintendent of the state school for the blind and the deaf, at Raleigh, N. C. Upon the failure of the census taker or county superintendent to make such reports, he shall be fined five dollars for each blind child not so reported.

Ex. Sess. 1908, c. 141, s. 4.

5772. Fines to school fund. All fines provided in this article, when collected, shall be paid to the public school fund of the county in which such blind child lives.

Ex. Sess. 1908, c. 141, s. 5.

5773. Sheriffs to enforce law. The sheriffs of the various counties of the state of North Carolina shall be required to enforce the provisions of this article in all cases of blind children reported to them by the superintendent of the state school for the blind and deaf. And they shall have authority to reimburse themselves for such services and expense as are entailed upon them in executing the provisions of this article.

1917, cc. 20, 254, s. 1.

5774. Superintendent of school for blind to have free transportation to enforce law. In order to aid the superintendent of the state school for the blind and deaf in securing the attendance of blind children upon the school, the various railroads operating in the state of North Carolina may grant him transportation without charge.

1917, cc. 20, 254, s. 1.

SUBCHAPTER X. COMMERCIAL SCHOOLS

ART. 51. COMMERCIAL SCHOOLS

5775. Licenses for commercial schools. Before any business college or commercial school shall receive or solicit students, or open any business school for the purpose of giving instruction in this state, said school or college shall first secure a license from the state board of examiners to the effect that it has complied with the requirements of this article, which license shall be issued by the state board of examiners upon the payment of an annual fee of ten dollars.

1915, c. 276, s. 1.

5776. Report to be filed before license. Before any such business college or commercial school shall be entitled to receive such license it shall file with the state board of examiners a report setting forth:

1. That it is the owner or lessee of suitable building or rooms for the conduct of its work.

2. That it has acquired suitable equipment for the courses given by the school.

3. That the said school has secured a faculty of teachers whose training has not been less than that required of teachers engaged in similar work in public schools of the state.

4. That said school or college has adopted an approved course of study which includes at least the following subjects: bookkeeping, commercial law, commercial arithmetic, English, commercial correspondence, business writing, shorthand, and typewriting.

5. The owner and manager of such school or college shall further file a certificate signed by the county superintendent of public instruction and the chairman of the county board of education of the county in which the school is situated, to the effect that the owner or manager of such school or college, after investigation, has shown satisfactory evidence of his or her efficiency and good moral character for fair and honest dealings with their students and the public.

1915, c. 276, s. 2.

5777. Advertising literature to be filed. The institutions securing license under this article shall file with the state board of examiners copies of all advertising literature, including catalogue, pamphlets, circulars, etc., and an annual report on or before the first day of July of each year.

1915, c. 276, s. 3.

5778. Conducting school without license misdemeanor. Any person who shall open or conduct any business college or commercial school within this state without having first procured the license herein provided for shall be guilty of a misdemeanor, and upon conviction thereof shall be fined or imprisoned at the discretion of the court.

1915, c. 276, s. 4.

5779. Blanks for reports and licenses; disposition of license tax. The superintendent of public instruction is authorized to furnish all necessary blanks for reports and licenses provided for under the provisions of this article, and all funds received from the license tax herein provided for shall be paid to the state treasurer for the expenses of the state board of examiners.

1915, c. 276, s. 5.

5780. Application of article. The provisions of this article shall apply to all existing chartered business colleges and commercial schools and all other business colleges and commercial schools now conducted or to be hereafter conducted in this state.

1915, c. 276, s. 6.

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ART. 1. UNIVERSITY OF NORTH CAROLINA

5781. Constitutional provisions. The general assembly shall have power to provide for the election of trustees of the University of North Carolina, in whom,

when chosen, shall be vested all the privileges, rights, franchises and endowments thereof, in any wise granted to or conferred upon the trustees of such university; and the general assembly may make such provisions, laws, and regulations from time to time as may be necessary and expedient for the maintenance and management of such university. The general assembly shall provide that the benefits of the university, as far as practicable, be extended to the youth of the state free of expense for tuition; also that all the property which has heretofore accrued to the state, or shall hereafter accrue, from escheats, unclaimed dividends, or distributive shares of the estates of deceased persons, shall be appropriated to the use of the university, and the general assembly shall establish and maintain, in connection with the university, a department of agriculture, of mechanics, of mining, and of normal instruction.

Rev., s. 4259; Const., art. 9, ss. 6, 7, 14.

5782. Incorporation and corporate powers. The trustees of the university shall be a body politic and corporate, to be known and distinguished by the name of the University of North Carolina, and by that name shall have perpetual succession and a common seal; and by that name shall be able and capable in law to take, demand, receive, and possess all moneys, goods, and chattels that shall be given for the use of the university, and to apply the same according to the will of the donors; and by gift, purchase, or devise to receive, possess, enjoy, and retain forever any and all real and personal estate and funds, of whatsoever kind, nature, or quality the same may be, in special trust and confidence that the same, or the profits thereof, shall be applied to and for the use and purpose of establishing and endowing the university, and shall have power to receive donations from any source whatever, to be exclusively devoted to the purposes of the maintenance of the university, or according to the terms of donation.

The corporation, by its corporate name, shall be able and capable in law to bargain, sell, grant, alien, or dispose of and convey and assure to the purchasers any and all such real and personal estate and funds as it may lawfully acquire when the condition of the grant to it or the will of the deviser does not forbid it; and shall be able and capable in law to sue and be sued in all courts whatsoever; and shall have power to open and receive subscriptions, and in general may do all such things as are usually done by bodies corporate and politic, or such as may be necessary for the promotion of learning and virtue.

Rev., ss. 4260, 4261; Code, ss. 2610, 2611, 2630; R. S., vol. 2, pp. 424, 425; 1789, c. 305, ss. 1, 2; 1874-5, c. 236, s. 2.

Brewer v. University, 110-26; Trustees v. McIver, 72-76; University v. Maultsby, 43-257.

5783. Tax exemption. The lands and other property belonging to the corporation shall be exempt from all kinds of public taxation.

Rev., s. 4262; Const., art. 6, s. 5; Code, s. 2614; R. S., vol. 2, p. 428; 1789, c. 306, s. 3.

5784. Escheats to university. All real estate which has heretofore accrued to the state, or shall hereafter accrue from escheats, shall be vested in the University of North Carolina, and shall be appropriated to the use of that corporation.

Rev., s. 4282; Const., art. 9, s. 7; Code, s. 2626; R. C., c. 113, s. 11; 1789, c. 306, s. 2.

“Escheat” defined hereunder: *Gilmour v. Kay’s Admrs.*, 3-108.

For actions to recover escheated lands, see *Trustees v. Foy*, 5-58; *University v. Harrison*,

90-385. The wife may be heir of husband as to undevised lands; but as to devised lands, they will escheat to the university rather than descend to the wife: *Grantham v. Jinnette*, 177-229.

5785. Unclaimed personalty on settlements of decedents' estates to university. All sums of money or other estate of whatever kind which shall remain in the hands of any executor, administrator, or collector for five years after his qualification, unrecovered or unclaimed by suit, by creditors, next of kin, or others entitled thereto, shall be paid by the executor, administrator, or collector to the University of North Carolina; and that corporation is authorized to demand, sue for, recover, and collect such moneys or other estate of whatever kind, and hold the same without liability for profit or interest, until a just claim therefor shall be preferred by creditors, next of kin, or others entitled thereto; and if no such claim shall be preferred within ten years after such money or other estate be received by such corporation, then the same shall be held by it absolutely.

Rev., s. 4283; Const., art. 9, s. 7; Code, ss. 2627, 1504; 1868-9, c. 113, s. 76; R. S., c. 46, s. 20; 1784, c. 205, s. 2; 1809, c. 763, s. 1.

See *University v. Maultsby*, 43-257; *Oliveira v. University*, 62-69; *University v. Hughes*, 90-537; *Warner v. R. R.*, 94-250; *Woody v. Brooks*, 102-341.

5786. Other unclaimed personalty to university. Personal property of every kind, including dividends of corporations, or of joint-stock companies or associations, choses in action, and sums of money in the hands of any person, which shall not be recovered or claimed by the parties entitled thereto for five years after the same shall become due and payable, shall be deemed derelict property, and shall be paid to the University of North Carolina and held by it without liability for profit or interest until a just claim therefor shall be preferred by the parties entitled thereto; and if no such claim shall be preferred within ten years after such property or dividend shall be received by it, then the same shall be held by it absolutely.

Rev., s. 4284; Code, ss. 2628, 2629.

5787. Application of receipts. All receipts heretofore had or hereafter to be had from dividends, escheated property, derelict property, money, or other property in the hands of executors, administrators, or collectors, and from any source whatever under authority of the state, and all interest thereon; shall be exclusively devoted by the trustees to the maintenance of the university.

Rev., s. 4285; Code, s. 2630; 1874-5, c. 236, s. 2.

See *Brewer v. University*, 110-26.

5788. Governor to preside at trustees' meetings or appoint presiding officer. The governor shall preside at all the meetings of the board at which he may be present; and if, by indisposition or other cause, the governor shall be absent from any meeting of the board, he may appoint, in writing, some other person, being a trustee, to act in his stead for the time being, which appointee shall preside accordingly; and if at any time the governor shall be absent from the meeting of the board and shall not have appointed some trustee to act in his stead it shall be lawful for the board to appoint some one of their number to preside for the time being.

Rev., s. 4263; Code, s. 2615; R. S., vol. 2, p. 432; 1805, c. 678.

5789. Trustees; number, election, and terms. There shall be one hundred trustees of the University of North Carolina, whose term of office shall be eight years, and who shall be elected by joint ballot of both houses of the general assembly as and when the terms of the present incumbents respectively expire. Sixteen of such trustees shall be selected from points conveniently accessible to the seat of government and the university. The superintendent of public instruction is ex officio a trustee of the university. In the trustees shall be vested all the rights, privileges, franchises, and endowments in any wise granted to or conferred upon the trustees of the University of North Carolina.

Rev., s. 4268; Const., art. 9, s. 6; Code, ss. 2620, 2625; 1873-4, c. 64; 1876-7, c. 121, ss. 1, 2; 1883, c. 124, ss. 1, 2; 1909, c. 432; 1917, c. 47.

5790. Trustees may remove members of board. The board of trustees shall have power to vacate the appointment and remove a trustee for improper conduct, stating the cause of such removal on the journal; but this shall not be done except at an annual meeting of the board, and there shall be present at the doing thereof at least twenty of the members of the board.

Rev., s. 4270; Code, s. 2619; R. S., vol. 2, p. 432.

5791. Filling vacancies in board. Whenever any vacancy shall happen in the board of trustees it shall be the duty of the secretary of the board of trustees to communicate to the general assembly the existence of such vacancy, and thereupon there shall be elected by joint ballot of both houses a suitable person to fill the same. Whenever a trustee shall fail to be present for two successive years at the regular meetings of the board, his place as trustee shall be deemed vacant within the meaning of this section.

Rev., ss. 4271, 4272; Code, s. 2622; 1804, c. 647; 1805, c. 678, s. 2; 1873-4, c. 64, s. 3; 1891, c. 98; 1907, c. 828.

5792. Meetings of trustees, annual and special; quorum. There shall be an annual meeting of the board of trustees in the city of Raleigh, which meeting shall be held during the session of the general assembly the years that body convenes. There shall also be held another annual meeting at such time and place as the governor may appoint. At any of the annual meetings of the board any number of trustees, not less than ten, shall constitute a quorum and be competent to exercise full power and authority to do the business of the corporation; and the board or the governor shall have power to appoint special meetings of the trustees at such time and place as, in their opinion, the interest of the corporation may require; but no special meeting shall have power to revoke or alter any order, resolution, or vote of an annual meeting; and the board of trustees at the annual meeting may, by resolution, vote, or ordinance, from time to time, as to it shall seem meet, limit, control, and restrain the business to be transacted, and the power to be possessed and exercised by special meetings of the board, called according to law, and the powers of such special meetings shall be limited, controlled and restrained accordingly. And every order, vote, resolution, or other act done, made, or adopted by any special meeting, contrary to any order, resolution, vote, or ordinance of the board at an annual meeting shall be absolutely, to all intents and purposes, null and void.

Rev., s. 4269; Code, ss. 2616, 2618, 2621; R. S., vol. 2, p. 433; 1873-4, c. 64, s. 2.

5793. Reports to general assembly. It shall be the duty of the trustees to cause annual reports to be made to the governor, to be transmitted by him to the general assembly, showing the receipts of the corporation from all sources, and the expenditures thereof, with the objects for which such expenditures were made.

Rev., s. 4276; 1885, c. 143, s. 4.

5794. Rules and regulations. The trustees shall have power to make such rules and regulations for the management of the university as they may deem necessary and expedient, not inconsistent with the constitution and laws of the state.

Rev., s. 4273; Code, s. 2623; 1873-4, c. 64, s. 4.

5795. Executive committee. The trustees shall have power to appoint from their own number an executive committee which shall be clothed with such powers as the trustees may confer.

Rev., s. 4267; Code, s. 2624; 1873-4, c. 64, s. 5.

5796. President and faculty; rules and discipline; degrees. The trustees shall have the power of appointing a president of the University of North Carolina and such professors, tutors, and other officers as to them shall appear necessary and proper, whom they may remove for misbehavior, inability, or neglect of duty. They shall have the power to make all such laws and regulations for the government of the university and preservation of order and good morals therein as are usually made in such seminaries, and as to them may appear necessary, provided the same are not contrary to the inalienable liberty of a citizen or to the laws of the state. The faculty of the university, that is to say, the president and professors, by and with consent of the trustees, shall have the power of conferring all such degrees or marks of literary distinction as are usually conferred by colleges or universities.

Rev., s. 4264; Code, s. 2613; R. S., vol. 2, p. 427; 1789, c. 305, s. 7.

5797. Treasurer; duties and bond. The trustees shall elect and commission some person to be treasurer for the corporation during the term of two years and until his successor shall be elected and qualified; which treasurer shall enter into bond, with sufficient sureties, payable to the state of North Carolina, in the sum of not less than ten thousand dollars, conditioned for the faithful discharge of his office and the trust reposed in him, and that all moneys and chattels belonging to the corporation that shall be in his hands at the expiration of his office shall then be immediately paid and delivered into the hands of the succeeding treasurer. Every treasurer shall receive all moneys, donations, gifts, bequests, and charities whatsoever that may belong or accrue to the corporation during his office, and at the expiration thereof shall account with the trustees for the same, and the same pay and deliver over to the succeeding treasurer; and on his neglect or refusal so to pay and deliver the same proceedings may be had against him as is or may be provided for the recovery of moneys from sheriffs or other persons chargeable with public moneys.

Rev., s. 4265; Code, s. 2612; R. S., vol. 2, p. 426; 1789, c. 305, s. 4.

5798. Vacancies in offices of secretary and treasurer. In case the office of secretary or treasurer of the corporation shall be vacant from any cause whatever, in the recess of the board of trustees, the president shall appoint a suitable person

to fill the same until the annual meeting of the board of trustees, at which time the board shall elect a proper person to fill such vacancy.

Rev., s. 4266; Code, s. 2617; R. S., vol. 2, p. 433.

5799. Normal department. It shall be the duty of the trustees to use the appropriation hereinafter made, as far as may be practicable, in carrying into effect sections seven and fourteen of article nine of the constitution; and particularly they shall provide such advanced instruction as may enable their students to learn the art of teaching in the university normal department and to be well qualified to become teachers of the schools of the state.

Rev., s. 4274; Code, s. 2639; 1881, c. 141, s. 2; 1887, c. 233, s. 3.

5800. Tuition fees; free tuition. The trustees are hereby instructed to reduce tuition at the university to sixty dollars per annum, to be paid in cash or by good note, and are further instructed to charge and collect from each student at the beginning of each term an amount sufficient to pay room rent, servant's hire, etc., for the term; but no young man of good moral character shall be denied admission because of his inability to pay cash or give a good note. The trustees are further instructed to adopt such rules for the admission of ministers' sons, candidates for the ministry, young men afflicted with bodily infirmity, and students preparing themselves for the purpose of teaching, as are adopted by other colleges throughout the state. All students in the normal department shall receive free tuition in this department if they agree in writing to teach for one year after leaving the university; but they shall pay full tuition in other departments. All other students shall be required to give their notes with the understanding that should they become able they shall pay the balance due the university at the time of their graduation in full.

Rev., s. 4275; Code, ss. 2633, 2634, 2635; 1885, c. 143, ss. 2, 3; 1887, c. 233, ss. 1, 2, 3.

5801. Prohibition of liquor selling. Any license granted to retail spirituous or malt liquors, wines or cordials, at Chapel Hill, or within four miles thereof, shall be void; and no person shall sell or deliver, or directly or indirectly receive any compensation for any spirituous liquors, bitters, or any intoxicating drinks within four miles of the corporate limits of Chapel Hill, Orange county, or within that village. No person shall erect, keep, maintain, or have at Chapel Hill, or within four miles thereof, any tippling house, establishment, or place for sale of wines, cordials, spirituous or malt liquors. It shall be unlawful for any person to sell or deliver, or offer to sell or deliver, or directly or indirectly receive any compensation for any spirituous or malt liquors, bitters, or any intoxicating drinks, for the purpose of being used, or with knowledge that the same will be used at Chapel Hill, or within four miles thereof, by any student of the university, without permission in writing from the president of the university or some other member of its faculty. No person, at or within four miles of Chapel Hill, shall give or furnish any electioneering treat or entertainment.

Rev., s. 4277; Code, ss. 2640, 2641, 2642, 2643; R. C., c. 113, ss. 1-4; R. S., c. 116, ss. 1, 2; 1827, c. 4; 1879, c. 232, ss. 1, 2, 3; 1880 (sp. sess.), c. 45; 1893, cc. 398, 449.

5802. Prohibition of certain games and exhibitions. No person shall set up, keep, or maintain at Chapel Hill, or within five miles thereof, any public billiard table or other public table of any kind at which games of chance or skill, by what-

ever name called, may be played. Nor shall he keep, within such five miles, any house, place, ten-pin alley, or any implement at which, or by means of which, any game of chance or hazard may be played.

Rev., s. 4278; Code, s. 2644; R. C., c. 113, s. 5; R. S., c. 116, s. 4; 1794, c. 429.

5803. Prohibition of theatrical and other entertainments. No person, without permission in writing obtained therefor from the president of the university or some other member of its faculty seven days beforehand, shall exhibit at Chapel Hill, or within five miles thereof, any theatrical, sleight-of-hand, or equestrian performances, or any dramatic recitations or representations, or any rope or wire dancing, natural or artificial curiosities, or any concert, serenade, or performance in music, singing or dancing.

Rev., s. 4279; Code, s. 2645; R. C., c. 113, s. 6; R. S., c. 116, s. 3; 1824, c. 1252.

5804. Violation of three preceding sections misdemeanor; jurisdiction; participant must testify. Any person violating any of the three next preceding sections shall be guilty of a misdemeanor, and fined not less than ten dollars nor more than fifty dollars, or be imprisoned not less than ten days nor more than thirty days; and if the offender is not brought to trial before some justice of the peace within twelve months after the commission of the offense, the superior court in term for the county in which the offense was committed may take jurisdiction of the same and punish the offender at the discretion of the court. No person shall be excused or incapacitated from testifying touching the violation of any of the three next preceding sections by reason of his having been a participant in the offenses; but the testimony of such person shall not be used against him in any criminal prosecution on account of such participation.

Rev., s. 4280; Code, s. 2646; R. C., c. 113, s. 7; 1879, c. 232, s. 3.

See *State v. Sykes*, 104-694.

5805. Certain contracts of students void. Every contract or agreement by any student of the university, being then a minor, with any shopkeeper, merchant, trader, or other person, upon the sale of any wine, cordial, spirituous or malt liquor, or of any goods, wares, or merchandise, or any article of trade, or with the keeper of any livery stable, shall be void, unless the same, if made at or within two miles of Chapel Hill, be made under the written permission of the president of the university or some other member of its faculty; or, if made at a greater distance from Chapel Hill, under the written consent of the person who may have the control and authority over such student. Every contract made with a student of the university contrary to this section shall be void, and may be avoided on account of any of the matters herein contained by answer denying the same. And on the trial, if it appear that the defendant was at the time of the alleged contract a student of the university, it shall be presumed that he was at the making thereof a minor. Every such contract shall be incapable of being confirmed; and any promise or obligation to perform the same, given by such student after his arrival at full age, shall be void.

Rev., s. 4281; Code, ss. 2647, 2648, 2649; R. C., c. 113, ss. 9, 10.

ART. 2. NORTH CAROLINA STATE COLLEGE OF AGRICULTURE AND
ENGINEERING

5806. Incorporation and corporate powers. The North Carolina State College of Agriculture and Engineering shall under that name be a body politic and corporate, with the right to hold property for the benefit of such college. The corporation, by its corporate name, shall be able and capable in law to bargain, sell, grant, alien, or dispose of and convey and assure to the purchasers any and all such real and personal estate and funds as it may lawfully acquire when the condition of the grant to it or the will of the deviser does not forbid it; and shall be able and capable in law to sue and be sued; and shall have the power to receive subscriptions, and in general may do all such things as are usually done by bodies corporate and politic for educational purposes.

1907, c. 406, s. 2; 1917, c. 111.

5807. Object of the college. The object of this college shall be to teach the branches of learning relating to agricultural and mechanical arts and such other scientific and classical studies as the board of trustees may elect to have taught, and to promote the liberal and practical education of the industrial classes in the several pursuits and professions of life.

1907, c. 406, s. 3.

5808. Share in appropriations by congress. The appropriations made or which may hereafter be made by the congress for the benefit of colleges of agricultural and mechanical arts shall be divided between the white and colored institutions in this state in the ratio of the white population to the colored, as ascertained by the preceding national census.

1907, c. 406, s. 1.

5809. Tax exemption. The lands and other property belonging to the corporation shall be exempt from taxation.

1907, c. 406, s. 7.

5810. Board of trustees; organization; terms of members. The management and control of the college shall be vested in a board of trustees to consist of sixteen members, representing the agricultural and other industries of the state, who shall be appointed by the governor with the advice and consent of the senate. The governor shall be ex officio president of the board. The new members shall be appointed by the governor with the advice and consent of the senate. Four of the said trustees shall be appointed for a term of eight years; four for a term of six years; four for a term of four years; and four for a term of two years. The length of the term of each member shall be designated by the governor. As the terms of these members first appointed under this article expire, their successors and all trustees appointed thereafter shall be appointed for a term of eight years. The board may elect a president pro tem., who shall preside in the absence of the governor, and this board shall exercise all the powers and be subject to all the duties imposed by this act. The treasurer of the state shall be ex officio treasurer of the board of trustees.

1907, c. 406, ss. 4, 6.

5811. Meetings of board; executive committee; compensation of members. The board shall meet annually in the city of Raleigh, or at the college, at such time as it may fix and at such other times as it may deem expedient for the good of the college, but not oftener than three times a year. It shall elect from its members an executive committee of five persons, one of whom shall be president pro tem., which committee shall meet at the call of the president and perform such duties as may be assigned them. The governor or president of the board shall call the first meeting of the board at such time as he deems fit. The members of the board shall receive the same mileage and per diem as is allowed members of the board of agriculture.

1907, c. 406, s. 5.

5812. Vacancies in board. If any trustee shall fail to attend the sessions of the board for one year, without furnishing good excuse for his absence, his place shall be deemed vacant. All vacancies shall be filled by appointment by the governor, as provided by law in the chapter Agriculture, as to vacancies in the board of agriculture.

1907, c. 406, s. 15.

5813. Reports of board. The board of trustees shall annually make a report to the governor concerning the work and requirements of the institution and of the receipts and expenditures of all funds which he shall transmit biennially to the legislature.

1907, c. 406, s. 16.

5814. Executive committee of board. The executive committee, or special committee appointed for the purpose, shall annually, as soon after the first of July as practicable, investigate the affairs of each department of the college and of the entire institution, and report to the next session of the board its condition, with such recommendations as they deem expedient.

1907, c. 406, s. 18.

5815. Application of receipts and property. All receipts shall be applied to the maintenance and promotion of the college and to the objects specified in any laws making appropriations for its support, or in accordance with the expressed wishes of any donor, as far as practicable.

1907, c. 406, s. 17.

5816. Board to accept gifts and congressional donations. The board shall use, as in its judgment may be proper, for the purposes of such college and for the benefit of education in agriculture and mechanic arts, as well as in furtherance of the powers and duties now or which may hereafter be conferred upon such board by law, any funds, buildings, lands, laboratories, and other property which may be in its possession. The board of trustees shall have power to accept and receive on the part of the state, property, personal, real or mixed, and any donations from the United States congress to the several states and territories for the benefit of agricultural experiment stations or the agricultural and mechanical colleges in connection therewith, and shall expend the amount so received in accordance with the acts of the congress in relation thereto.

1907, c. 406, s. 6.

NOTE.—For acceptance by North Carolina of the congressional grant under the Smith-Lever act of congress for agricultural extension work (38 U. S. stat. at L. 372), the work to be carried on in connection with the N. C. state college of agriculture and engineering, see res. No. 26 of general assembly of 1915, pub. laws 1915, p. 469.

5817. Land scrip fund. The board of trustees shall own and hold the certificates of indebtedness, amounting to one hundred and twenty-five thousand dollars, issued for the principal of the land scrip fund, and the interest thereon shall be paid to them by the state treasurer semiannually on the first day of July and January in each year for the purpose of aiding in the support of such college in accordance with the act of the congress approved July second, one thousand eight hundred and sixty-two, entitled "An act donating public lands to several states and territories which may provide colleges for the benefit of agriculture and the mechanic arts."

1907, c. 406, s. 8.

5818. Powers of board as to college government and officials. The board shall have power to appoint the president, professors, instructors, and other officers and servants, as they deem necessary and proper, whom they may remove for misbehavior, inability, neglect of duty, or other good reason, and to make such laws and regulations for the government of the institution as may appear to them necessary for the preservation of order and good morals therein, and as are usually made in such institutions and are not contrary to the constitution and laws of this state.

1907, c. 406, s. 9.

5819. Conferring of degrees. The president and instructors, under the direction and supervision of the trustees, shall have power to confer such degrees or certificates of proficiency or marks of merit as may be deemed proper, and to arrange curriculum of college into courses of study necessary to be pursued in order to obtain the respective degrees provided for by the board.

1907, c. 406, s. 10.

5820. Free scholarships. The board of trustees shall admit to the privileges of the college, free of any charge for tuition, upon proper evidence of good moral character and of their inability and the inability of their parents or guardians to pay for their tuition, and of their capacity to receive instruction, one hundred and twenty youths, limited to one for each member of the house of representatives, and no more, and shall apportion the same to the different counties applying according to their respective number of members in the house of representatives of North Carolina. An appointment may be made for one year at a time for a county from which there is no applicant from any other county. And it shall be the duty of the superintendent of public instruction in each county, on the days fixed by law for the examination of teachers of the public schools, also to examine candidates for appointment as county students to such college; blanks for such purpose to be furnished annually by the president of the college to the superintendents in each county. The bursar shall keep a roll of the students receiving free tuition and upon whose recommendation appointed, and furnish a copy annually to the board of trustees.

1907, c. 406, s. 11.

5821. Free tuition. For the purpose of making it possible for a greater number of worthy and yet needy young men to advance the farming interest of the state by training themselves in modern agricultural methods, the trustees of the North Carolina state college of agriculture and engineering are hereby authorized, if they can do so, to admit free of tuition into that institution one needy farm boy from each county. This free tuition, if given, shall not interfere with the scholarships which the trustees are now required by law to give. All young men granted free tuition under this section must agree to farm at least two years or to teach agriculture in the state schools.

1913, c. 153.

5822. Sewer connection. The board is empowered to contract with owners of property in the vicinity of the college grounds, and allow them to connect with the sewer construction for the college under chapter seven hundred and four of the public laws of one thousand eight hundred and ninety-nine, upon payment of proper sums respectively for the privilege.

1907, c. 406, s. 13.

5823. Water supply. The board shall have the full power and authority to enter into any contract or agreement with any firm, person, or corporation in a sum not exceeding ten thousand dollars to furnish a permanent supply of water for the said college, and the executive committee hereinbefore mentioned is hereby authorized and empowered to carry out and make said contract for the purpose above set out.

Ex. sess. 1908, c. 123, s. 1.

5824. Use of agricultural buildings. The agricultural building built under the authority of chapter six hundred of the laws of one thousand nine hundred and three shall be used for conducting investigations and for instruction in respect to milk and beef cattle, diseases of animals, trucking, fruit-growing, commercial fertilizers, diversified farming, and other subjects pertaining to practical agriculture.

1907, c. 406, s. 14.

5825. Agricultural experiment station. The agricultural experiment and control station shall be connected with the college and controlled by the board of trustees thereof.

1907, c. 406, s. 12.

NOTE.—See chapter Agriculture, sec. 4682.

ART. 3. NEGRO AGRICULTURAL AND TECHNICAL COLLEGE OF NORTH CAROLINA

5826. Establishment and name. A college of agriculture and mechanical arts is hereby established for the colored race to be located at some eligible site within this state. Such institution shall be denominated The Negro Agricultural and Technical College of North Carolina.

Rev., s. 4221; 1891, c. 549, ss. 1, 2; 1915, c. 267.

5827. Object of college. The leading object of the institution shall be to teach practical agriculture and the mechanic arts and such branches of learning as relate thereto, not excluding academical and classical instruction.

Rev., s. 4222; 1891, c. 549, s. 3.

5828. Board of trustees; appointment; vacancies; president. The management and control of the college and the care and preservation of all of its property shall be vested in a board of trustees, who shall be elected by the general assembly. The board of trustees shall consist of fifteen members, five of whom shall be elected at each regular session of the general assembly and shall hold office for six years. Any vacancy which, for any cause, may occur, shall be filled by the governor for the unexpired term. The board shall annually elect one of their number to be president of the board of trustees.

Rev., s. 4223; 1891, c. 549, s. 4; 1899, c. 389, s. 1.

5829. Meetings of board; compensation; executive board. The number and times of the meeting of the board of trustees shall be fixed by the board, and the trustees shall not receive any pay or per diem, but only their traveling expenses and hotel fare, and that only for four times in each year. The board of trustees shall have power to elect an executive board of three of their own number, who shall have the immediate management of the institution when the full board is not in session.

Rev., s. 4224; 1899, c. 389, ss. 2, 3.

5830. Powers of trustees. The board of trustees shall have power to prescribe such rules for the management and preservation of good order and morals at the college as are usually made in such institutions; shall have power to appoint its president, instructors, and as many other officers or servants as to them shall appear necessary and proper, and shall fix their salaries, and shall have charge of the disbursement of the funds, and have general and entire supervision of the establishment and maintenance of the college, and the president and instructors in the college, by and with the consent of the board of trustees, shall have the power of conferring such certificates of proficiency or marks of merit and diplomas as are usually conferred by such colleges.

Rev., s. 4225; 1891, c. 549, s. 5.

5831. Admission of pupils. In addition to the powers hereinbefore granted, the board of trustees shall have power to make such rules and regulations with respect to the admission of pupils to the college for the various congressional districts of this state as they may deem equitable and right, having due regard to the colored population thereof.

Rev., s. 4226; 1891, c. 549, s. 7.

5832. Power to receive property, and proportion of congressional donations. The board of trustees is empowered to receive any donation of property which may be made to the college, and shall have power to invest or expend the same for the benefit of the college; and shall have power to accept on behalf of this college such proportion of the fund granted by the congress of the United States to the state of North Carolina for industrial and agricultural training as is apportioned to the colored race, in accordance with the act or acts of the congress in relation thereto.

Rev., s. 4227; 1891, c. 549, ss. 6, 12.

NOTE.—As to division of congressional donations between white and negro institutions, see this chapter, s. 5808.

ART. 4. NORTH CAROLINA COLLEGE FOR WOMEN

5833. Incorporation and corporate powers. The members of the board of directors of the institution for the education of young women of the white race, which institution is the property of the state and is now located at Greensboro, are and shall continue to be a corporation under the name of The North Carolina College for Women, with all the powers usually conferred upon such bodies, enabling it to receive, protect, and hold property, and do all things necessary for the purpose for which the corporation is created.

Rev., s. 4251; 1891, c. 139, s. 1; 1897, c. 230, s. 1; 1919, c. 199, s. 1.

5834. Board of directors; election, qualifications and number; state superintendent a member and president of. The corporation shall be managed by a board of ten directors, no two of whom shall be chosen from the same congressional district. The term of office of each director shall be six years. The state board of education, by and with the advice and consent of the senate, shall appoint directors to fill vacancies as they may respectively occur by the expiration of the terms of office of the present incumbents. Vacancies that may occur by death or resignation shall be filled for the unexpired term by the state board of education. All directors shall take an oath faithfully to perform their duties as required by law, and shall hold office until their successors shall be elected and qualified. The state superintendent of public instruction shall be an additional member of the board of directors and shall be its president. The board of directors shall report biennially, before the meeting of each general assembly, to the governor the operations of the corporation.

Rev., s. 4252; 1891, c. 139, s. 3.

5835. Objects of institution; free tuition to teachers. The objects of the institution shall be to teach young white women all branches of knowledge recognized as essential to a liberal education, such as will familiarize them with the world's best thought and achievement and prepare them for intelligent and useful citizenship; to make special provision for training in the science and art of teaching, school management, and school supervision; to provide women with such training in the arts, sciences, and industries as may be conducive to their self-support and community usefulness; to render to the people of the state such aid and encouragement as will tend to the dissemination of knowledge, the fostering of loyalty and patriotism, and the promotion of the general welfare. Tuition shall be free, upon such conditions as may be prescribed by the board of directors, to those who signify their intention to teach in the schools of North Carolina; and also, in the discretion of said board, to those who signify their intention to enter other fields of public service.

1919, c. 199, s. 2.

5836. Rules and regulations; admission of students. The board of directors shall make rules and regulations for the government of the corporation and the admission of students, but shall not discriminate against any county in the number of students allowed it, in case all applicants cannot be accommodated. Each county shall have representation in proportion to its white school popula-

tion, if it desires it; and, should any county fail to avail itself of its proportionate number, the board of directors may recognize applicants from counties which already have their proportionate representation.

Rev., s. 4254; 1891, c. 139, s. 4.

5837. Directors to appoint president and faculty; extension work. The board of directors shall have the power of appointing a president and such professors, tutors, and other officers as to them shall appear necessary and proper, for such terms and under conditions as they may prescribe, and shall also have the power to make regulations for the government of said college as shall not conflict with the laws of the state. And the faculty of the college, by and with the consent of the board of directors, shall have the power of conferring such degrees as are usually conferred by colleges. That it shall be the duty of the faculty of the North Carolina college for women to extend its influence and usefulness as far as possible to the persons of the state who are unable to avail themselves of its advantages as resident students, by extension courses, by lectures, and by such other means as may seem to them most effective.

1919, c. 199, s. 3.

5838. Matron's hall. For the benefit of those who may desire to avail themselves of it a matron's hall shall be established at which board shall be furnished at actual cost.

Rev., s. 4257; 1891, c. 139, s. 12; 1905, c. 502; 1919, c. 199, s. 4.

ART. 5. CULLOWHEE NORMAL AND INDUSTRIAL SCHOOL

5839. Cullowhee Normal and Industrial School incorporated. The Cullowhee Normal and Industrial School, having been created by chapter three hundred and sixty-nine of the private laws of nineteen hundred and five a public educational institution of the state, is and shall remain a corporation under the name of the Cullowhee Normal and Industrial School, with power to sue and be sued, to make contracts and to exercise all other corporate rights and privileges incident to a public educational institution of the state and necessary to the management of the school.

1905 (Pr.), c. 369.

NOTE.—For former legislation as to this institution and its predecessor, The Cullowhee High School, see 1891 (Pr.), c. 170; 1893 (Pr.), c. 120; 1897 (Pr.), c. 213; 1905 (Pr.), c. 369.

5840. Board of directors: term; vacancies; state superintendent a member and chairman. The board of directors of the Cullowhee normal and industrial college shall consist of the persons named in chapter sixty-seven of the public laws of nineteen hundred and fifteen and their successors elected by the general assembly for terms of six years as the terms of the directors named in that act expire. Vacancies occurring by death, resignation, or otherwise may be filled by the board. The state superintendent of public instruction is ex officio a member and chairman of the board.

1915, c. 27.

5841. Property transferred from Cullowhee high school. All property belonging to the Cullowhee high school, established by chapter one hundred and seventy of the private laws of eighteen hundred and ninety-one, is from and after the establishment of the Cullowhee normal and industrial school, by chapter three hundred and sixty-nine of the private laws of nineteen hundred and five, transferred to the state board of education and its successors in office, to be under the control and care of the superintendent of public instruction.

1905 (Pr.), c. 369; 1909, c. 644.

5842. Management and rules; free tuition. The Cullowhee normal and industrial school shall be under the supervision of the state superintendent of public instruction, who shall have power to prescribe rules and regulations for the management of the same. Young men and women preparing themselves for teachers shall pay no charge for tuition in the school.

Rev., s. 4248.

ART. 6. CHEROKEE INDIAN NORMAL SCHOOL OF ROBESON COUNTY

5843. Incorporation and corporate powers; location. The Cherokee Indian Normal School of Robeson County shall be and remain a state institution for educational purposes, in the county of Robeson, under the name and style aforesaid, and by that name may have perpetual succession, sue and be sued, contract and be contracted with; have and hold school property, including buildings, lands, and all appurtenances thereto, situated in the county of Robeson, at any place in that county to be selected by the trustees between Bear swamp and Lumber river; acquire by purchase, donation, or otherwise, real and personal property for the purpose of establishing and maintaining a school of high grade for teachers of the race of Cherokee indians of Robeson county in North Carolina.

Rev., s. 4236; 1887, c. 400, ss. 1, 6; 1911, cc. 168, ss. 1, 2, 215, s. 4; 1913, c. 123, ss. 4, 6.

NOTE.—This institution was formerly The Indian Normal School of Robeson County, 1913, c. 123, s. 6, which succeeded The Croatan Indian Normal School, 1911, c. 215, s. 4, previously incorporated as The Croatan Normal School, 1887, c. 400.

5844. Appointment of trustees. The state board of education shall appoint seven members of the indian race, formerly called Croatans, and now known as the Cherokee Indians of Robeson County, to be constituted the board of trustees of said school, as follows: Two members for the term of two years, two for the term of four years, and three for the term of six years, and at the expiration of these terms their successors shall be appointed by the state board of education for a term of six years.

1911, c. 168, s. 2; 1913, c. 123, s. 4.

5845. President; election and duties. The trustees shall elect one of their own number president of the corporation, whose duties shall be such as devolve upon such officers in similar cases, or such as shall be defined by the trustees.

Rev., s. 4237; 1887, c. 400, s. 2; 1911, c. 168, s. 2.

5846. Trustees to employ and discharge teachers and manage school. The board of trustees of said Cherokee indian normal school of Robeson county shall have

the power to employ and discharge teachers, to prevent negroes from attending said school, and to exercise the usual functions of control and management of said school, their action being subject to the approval of the state board of education.

1911, c. 168, s. 3.

5847. Admission and qualifications of pupils. Persons of the Cherokee indian race of Robeson county, of either sex, who are not under thirteen years of age, may attend such school, and children not under eleven years of age may be admitted who can stand an approved examination in spelling, reading, writing, primary geography, and the fundamental rules of arithmetic. All those who shall enjoy the privileges of such school as students shall previously obligate themselves to teach the youth of the race of Cherokee indians of Robeson county for a stated period.

Rev., s. 4241; 1887, c. 400, s. 10; 1893, c. 515, s. 2; 1911, c. 215, ss. 2, 3; 1913, c. 123, s. 4.

Admission is not restricted to Indians living within Robeson, but includes all who bring themselves within the limits of the school by becoming residents in good faith: Goins v. Indian Training School, 169-736.

5848. Tax exemption. All property, real and personal, acquired by this corporation, by purchase, donation, or otherwise, as long as it is used for educational purposes, shall be exempt from taxation, whether on the part of the state or county.

Rev., s. 4239; 1887, c. 400, s. 8.

5849. Title to property of school conveyed to state board of education. In accordance with the recent action of the trustees, in meeting assembled, of the Croatan state normal school, now known as the Cherokee Indian Normal School of Robeson County, situated near Pembroke, North Carolina, said school being incorporated under chapter four hundred, public laws of one thousand eight hundred and eighty-seven, which action of the trustees of said school has been duly certified to by the president, C. R. Sampson, and the secretary, A. A. Locklear, the said trustees are hereby empowered to convey by deed to the state board of education the title to all property of said school, and the state board of education is hereby authorized to accept same.

1911, c. 168, s. 1; 1911, c. 215, s. 2.

ART. 7. NEGRO NORMAL SCHOOLS

5850. Power of state board of education to establish. The state board of education is hereby empowered to establish a normal school at any place it may deem most suitable, either in connection with one of the colored schools of high grade in the state, or otherwise, for teaching and training young men and women of the colored race, from the age of fifteen to twenty-five years, for teachers in the common schools of the state for the colored race. A preparatory department may be established in connection with the colored normal schools. And such board shall have the power to remove or close any of the existing state normal schools for the colored race.

Rev., s. 4180; Code, ss. 2651, 2652; 1881, cc. 91, 141, s. 5; 1879, c. 54, ss. 1, 2; 1876-7, c. 234, s. 2; 1901, c. 565, s. 1.

5851. Beneficiaries expected to teach three years. It will be required and expected of all young persons who may be thus taught and trained for teachers of colored common schools at the cost of the state to apply themselves, as far as practicable, to the occupation of teaching, within the borders of this state, for a term of not less than three years after leaving school.

Rev., s. 4181; Code, s. 2653; 1876-7, c. 234, s. 3.

5852. Board of directors; appointment; powers; service without compensation. The state board of education shall have power to appoint a board of seven directors, not more than five of whom shall reside in the county in which the school is located, for each of the colored normal schools. This board shall have the general management of such schools and shall have power to elect the teachers of the same and such other powers for the management of such schools as are not vested in the state board of education. These directors shall receive no compensation for their services other than actual expenses while attending meetings of the board. Two members of these boards of directors shall serve two years, two four years, and two six years; and they shall be appointed in May, one thousand nine hundred and seven, and thereafter, as vacancies occur by the expiration of the term of office of each, his successor shall be appointed by the state board of education for a term of six years, and vacancies occurring by resignation or death or otherwise of any member of said board of directors, before the expiration of his term of office, shall be filled by the state board of education for the unexpired term. The board of directors of each school shall elect one of their number chairman, one secretary, and one treasurer. All accounts or bills must be approved by the chairman and secretary before being paid by the treasurer.

Rev., s. 4182; 1903, c. 740; 1907, c. 856, s. 1; 1919, c. 309.

5853. Superintendent; election, duties, and salary. The state board of education may elect a superintendent of these colored normal schools and of the Cherokee indian normal school of Robeson county, and shall fix his salary. His duties shall be outlined by the state board of education, and he shall perform such other duties in the educational department of the state as the state superintendent of public instruction may direct. His salary and expenses shall be paid out of the annual appropriations for the state normal schools for the colored race upon the requisition of the state superintendent of public instruction.

Rev., s. 4182; 1903, c. 740; 1907, c. 856, s. 1.

5854. Special conditional appropriation to Slater school. For the purpose of aiding the trustees of Slater industrial and state normal school, and for securing for the state the use of the buildings erected and now used by that corporation, the treasurer shall pay to the state board of education, out of any funds in the treasury not otherwise appropriated, a sum equal in amount to the sum annually raised by the trustees and officers of such corporation; but the amount to be so paid in any one year shall not exceed one thousand dollars.

Rev., s. 4185; 1899, c. 561, ss. 1, 8.

ART. 8. APPALACHIAN TRAINING SCHOOL

5855. Incorporation and corporate powers; name; vacancies. The persons named in section one of chapter seven hundred and ninety-eight of the public

laws of one thousand nine hundred and three, in section one of chapter five hundred and twenty-six of the public laws of one thousand nine hundred and seven, in section one of chapter five hundred and twenty-seven of the public laws of one thousand nine hundred and fifteen, and in section one of chapter one hundred of the public laws of one thousand nine hundred and seventeen, and their successors, are and shall continue to be a board of trustees, and as such constitute a corporation under the name of the Appalachian Training School for Teachers, and as such may sue and be sued, may purchase and hold real estate and personalty, receive donations, and do all things useful and necessary to carry out the true intent and meaning of said chapters. But all real property acquired for the purpose of such corporation under the provisions of said chapters shall be conveyed by deed to the state of North Carolina. The terms of office of all the trustees in office March tenth, one thousand nine hundred and nineteen, shall expire on May first, one thousand nine hundred and twenty-one, with their successors to be appointed by the governor and confirmed by the senate. The superintendent of public instruction of North Carolina is hereby declared to be a member ex officio of the board of trustees.

Rev., s. 4229; 1903, c. 798, ss. 1, 9, 11; 1907, c. 526, s. 1; 1915, c. 527, s. 1; 1917, c. 100, s. 1; 1919, c. 231, s. 1.

5856. Object of the corporation; free tuition provided. The object in creating such corporation is the establishment of a training school for teachers in western North Carolina, to which end tuition in such school shall be free to all persons of the white race in the state who shall sign a pledge to teach in the public schools of North Carolina for a term of not less than two years.

Rev., s. 4230; 1903, c. 798, s. 6.

5857. Corporate meetings and organization; treasurer's bond. The board of trustees shall meet annually at a time and place to be fixed by them, and elect a president and secretary and treasurer of the corporation. The president of said board and five members shall be a quorum to transact any and all business. The treasurer shall give a bond, with sufficient surety, to be approved by the corporators, payable to the state of North Carolina, in a sum not less than double the amount of money that shall go into his hands.

Rev., s. 4231; 1903, c. 798, ss. 2, 10; 1907, c. 526, s. 2.

5858. Solicitation of subscriptions. The board of trustees shall open books of subscription, and shall have power to appoint an agent to solicit and collect subscriptions for the purpose of erecting buildings suitable and necessary for the establishment of such school.

Rev., s. 4232; 1903, c. 798, s. 3.

5859. Election of teachers; length of school term. The board of trustees shall elect all teachers and fix their salaries and the length of the term of the school.

Rev., s. 4233; 1903, c. 798, s. 8.

5860. Appointment of police officer authorized. The board of trustees of the Appalachian training school may appoint some suitable person as police officer

for the premises of said training school and the highways passing through it, and he shall have the same power and authority therein as a police officer of an incorporated town.

1919, c. 231, s. 2.

5861. Annual reports to state superintendent. Full reports of the work of the corporation and complete financial statements of the treasurer shall be made annually to the state superintendent of public instruction on or before the first day of October, and such other reports as such superintendent may require.

Rev., s. 4234; 1903, c. 798, s. 11.

5862. Trustees may dispose of land for railroad depot and right of way. The trustees of the Appalachian training school at Boone, N. C., are empowered to sell or donate a site for a depot, not to exceed three acres, on the land now owned by the training school to the Watauga and Yadkin river railroad company, or any other railroad company, for the purpose of erecting a depot on same in the town of Boone, N. C., at whatever price may be agreed upon by the trustees and the railroad company. And the board of trustees are empowered to sell or donate to said railroad company, or any other railroad company, a right of way over their said property for the purpose of constructing a railroad over same. The board of trustees are further empowered to execute deeds to said railroad company, or any other railroad company, for the right of way and for the site for the construction of a depot. They are further empowered to apply any funds derived under this section to the permanent improvement of said Appalachian training school, in such way as may appear best to them.

1913, c. 115; 1917, c. 83.

ART. 9. EAST CAROLINA TEACHERS' TRAINING SCHOOL

5863. Incorporation and corporate powers. The trustees of the East Carolina Teachers' Training School, established by an act of the general assembly of North Carolina of one thousand nine hundred and seven, and located at Greenville, North Carolina, shall be and are hereby constituted a body corporate by and under the name and style of "The Board of Trustees of the East Carolina Teachers' Training School," and by that name may sue and be sued, make contracts, acquire real and personal property by gift, purchase, or devise, and exercise such other rights and privileges incident to corporations of like character as are necessary for the proper administration of said school.

1907, c. 820, ss. 11, 12, 16; 1911, c. 159, s. 1.

5864. Object of school. The school shall be maintained by the state for the purpose of giving to young white men and women such education and training as shall fit and qualify them to teach in the public schools of North Carolina.

1907, c. 820, s. 13; 1911, c. 159, s. 3.

5865. Free tuition; diplomas and certificates. Tuition in said school shall be free to those who signify their intention to teach for such time and upon such conditions as may be prescribed by the board of trustees; and the board of trus-

tees, upon the recommendation of the faculty, shall give those students in said school who have completed the prescribed course of study a diploma of graduation; and they may upon the recommendation of the faculty grant certificates of proficiency for the completion of special courses.

1907, c. 820, s. 14; 1911, c. 159, s. 5.

5866. Board of trustees; appointment; terms; vacancies; oath. Said board of trustees shall be composed of nine persons, together with the state superintendent of public instruction as chairman ex officio, said trustees to be appointed by the state board of education. Two members of said board shall be from the first congressional district, two from the second, two from the third, two from the fourth, and one from the sixth, and their term of office shall be six years. The state board of education, upon the expiration of the term of office of any member of the board of trustees, shall appoint his successor for the full term of six years. Vacancies occurring by death or resignation of any member of this board shall be filled by appointment of the state board of education for the unexpired term. All trustees shall take oath to perform faithfully their duties, and shall hold office until their successors have been duly appointed and qualified.

1907, c. 820, s. 15; 1911, c. 159, s. 2.

5867. Course of study. The board of trustees shall have power to prescribe the course of study of said school and shall lay special emphasis on those subjects taught in the public schools of the state, and on the art and science of teaching. And in no event shall they prescribe a curriculum beyond that which would fit and prepare a student for unconditional entrance into the freshman class of the university of North Carolina.

1907, c. 820, s. 13; 1911, c. 159, s. 4.

5868. Discrimination against counties. The board of trustees shall make no rules that discriminate against one county in favor of another in the admission of pupils into said school.

1907, c. 820, s. 17.

5869. Power of exclusion from dormitories. When, in the judgment of the board of trustees, the best interest of the school will be promoted thereby, the board may decline to admit young men into the rooms of the dormitories.

1911, c. 159, s. 6.

5870. Vesting the rights and titles. All rights and titles heretofore acquired in any way for the use and benefit of said training school shall vest and remain in the said board of trustees as herein incorporated.

1911, c. 159, s. 7.

5871. Biennial reports to governor. The trustees shall report biennially to the governor, before the meeting of each general assembly, the operation and condition of said school.

1907, c. 820, s. 15; 1911, c. 159, s. 8.

ART. 10. STATE SCHOOL FOR THE BLIND AND THE DEAF

5872. Incorporation and management. The institution for the education of the deaf and dumb and the blind, located in the city of Raleigh, on Caswell square,

and on a lot located in the eastern part of the city, belonging to the state, and on which the institution for the colored children is located, shall be a corporation under the name and style of The State School for the Blind and the Deaf, and shall be under the management of a board of directors and superintendent.

Rev., s. 4187; Code, s. 2227; 1881, c. 211, s. 1; 1917, c. 35, s. 1.

5873. Directors; appointment; terms; vacancies. The governor shall, by and with the consent of the senate, appoint eleven directors for said institution. The directors shall be divided into three classes. The first two classes shall consist of four each and the other class shall consist of three. The first class shall be appointed in one thousand nine hundred and five and every six years thereafter; the second class in one thousand nine hundred and seven and every six years thereafter; the third class in one thousand nine hundred and nine and every six years thereafter. They shall hold their offices until their successors are elected and qualified, and the term of office shall begin on the first day of March of the respective years. The governor shall fill all vacancies occurring by reason of death, resignation, or otherwise. In case of vacancies occurring when the senate is not in session, the appointees to fill such vacancies shall hold office until confirmed or rejected by the senate.

Rev., s. 4188; Code, s. 2228; 1899, cc. 311, 540; 1901, c. 707; 1905, c. 67.

Case of historical interest: *Holt v. Bristol*, 122-245.

5874. President, executive committee, and other officials; election, terms, and salaries. The board of directors shall organize by electing one of its number president and three an executive committee. The terms of office in each case shall be for two years. The board shall elect a superintendent, who shall be ex officio secretary of the board, and whose term of office shall be for three years; also a steward and a physician whose terms of office shall be for two years; and such other officers, agents, and teachers as shall be deemed necessary. The compensation for officers and agents and teachers, mentioned in this section, shall be fixed by the board, and shall not be increased nor reduced during their term of service. The board shall have power to erect any buildings necessary, make improvements, and in general do all matters and things which may be beneficial to the good government of the institution, and to this end may make by-laws for the government of the same. The board of directors may term the head teacher of the white department "principal," and the chief officer of the colored department "principal of the colored department."

Rev., s. 4189; Code, s. 2229; 1881, c. 211, s. 3; 1917, c. 35, ss. 1, 2.

5875. Meetings of the board. The board shall meet at stated times and also at such other times as it may deem necessary. The members of the board shall serve without reward, save their traveling expenses incurred in the discharge of their official duties.

Rev., s. 4190; Code, s. 2230; 1881, c. 211, s. 4.

5876. Admission of pupils; how admission obtained. The board of directors shall, on application, receive in the institution for the purpose of education, in the main department, all white blind children, and in the department for the colored all colored deaf-mutes and blind children, residents of this state, not of

confirmed immoral character, nor imbecile, nor unsound in mind, nor incapacitated by physical infirmity for useful instruction, who are between the ages of seven and twenty-one years: Provided, that application shall be made and applicants received at stated times, which shall be at the commencement of some scholastic year.

In case of deaf-mutes the following questions shall be answered:

Name?

Is the child white or colored?

When and where was he born?

Was he born deaf?

At what age did he lose his hearing?

By what disease or accident did he become deaf?

Is the deafness total or partial?

Have any attempts been made to remove the deafness?

Is there any ability to articulate or read on the lips?

Have any attempts been made to communicate instruction?

Is he laboring under any bodily infirmity?

Does he show any signs of mental imbecility or idiocy?

Has he had the smallpox or been vaccinated?

Has he had the scarlet fever?

Has he had the measles?

Has he had the mumps?

Has he had the whooping-cough?

Are there any other cases of deafness in the family?

Are there any cases of deafness among relatives or ancestors?

What is the name of the father?

What is the name of the mother?

What is the occupation of the father?

What is his postoffice address?

Is either of the parents dead?

Has a second connection been formed by marriage?

Was there any relationship between the parents previous to marriage?

In case of blind applicants the following questions shall be answered:

Name?

Is the child white or colored?

When and where was he born?

Was he born blind?

At what age did he become blind?

By what disease or accident did he become blind?

Is the blindness total or partial?

Have any attempts been made to remove the blindness?

Have any attempts been made to communicate instruction?

Is he laboring under any bodily infirmity?

Does he show any signs of mental imbecility or idiocy?

Has he had the smallpox or been vaccinated?

Has he had the scarlet fever?

Has he had the measles?

Has he had the mumps?
Has he had the whooping-cough?
Are there any other cases of blindness in the family?
Are there any cases of blindness among relatives or ancestors?
What is the name of the father?
What is the name of the mother?
What is the occupation of the father?
What is his postoffice address?
Is either of the parents dead?
Has a second connection been formed by marriage?
Was there any relationship between the parents previous to marriage?

When the application is made, it shall be filed in the office of the superintendent, and on reception of applicant a record of such pupil shall be made and entered in a book to be kept for that purpose.

Rev., s. 4191; Code, s. 2231; 1881, c. 211, s. 5; 1917, c. 35, s. 1.

5877. Admission of curable blind. The directors of the institution for the blind, in the city of Raleigh, shall set apart two rooms in said institutions, one for males and one for females, for the use of the curable blind who, by reason of poverty, are unable to pay for treatment. It shall be the duty of the directors of the institutions for the blind in Raleigh to admit into such institutions, from time to time, such of the blind of the state as they may deem to be curable.

Rev., s. 4192; 1895, c. 461.

5878. Admission of pupils from other states. The board may, on such terms as they deem proper, admit as pupils persons of like infirmity from any other state: Provided, such power shall not be exercised to the exclusion of any child of this state, and the person so admitted shall not acquire the condition of a resident of the state by virtue of such pupilage.

Rev., s. 4193; Code, s. 2232; 1881, c. 211, s. 6.

5879. Board may confer degrees. The board may, upon the recommendation of the superintendent and faculty, confer such degree or marks of literary distinction as may be thought best to encourage merit.

Rev., s. 4194; Code, s. 2233; 1881, c. 211, s. 7; 1917, c. 35, s. 1.

5880. Election of officers. The board of directors shall, on the second Monday in May, one thousand nine hundred and five, and every three years thereafter, elect an officer to be styled superintendent. They may elect all officers and teachers at the same time. The terms of office of the superintendent and the steward shall begin June first, and the terms of all other officers and teachers shall begin September first, and for the periods named in this article. The superintendent shall be a man of good moral character, and shall have experience as a teacher in the deaf, dumb, and blind school of North Carolina, or some similar institution, for the term of two or more years. He shall have charge of the institution in all its departments, and shall do and perform such duties and exercise such supervision as is incumbent upon such officer.

Rev., s. 4195; Code, s. 2234; 1881, c. 211, s. 8; 1889, c. 539, 1893, c. 137; 1901, c. 707, s. 2; 1917, c. 35, s. 1.

5881. State treasurer, treasurer of. The state treasurer shall be ex officio treasurer of the institution. He shall report to the board at such times as they may call on him, showing the amount received on account of the institution, amount paid out, and amount on hand.

Rev., s. 4196; Code, s. 2235; 1881, c. 211, s. 9.

5882. Reports of board to governor. The board shall make a report to the governor on the first of January next before the regular meeting of the general assembly, showing the condition of the institution in its various departments, and shall give any information the governor shall desire from time to time.

Rev., s. 4196; Code, s. 2235; 1881, c. 211, s. 9.

5883. Removal of officers. The board shall have power to remove any officer, employee, or teacher for gross immorality, wilful neglect of duty, or any good and sufficient cause; but in any such case notice in writing of the charges shall be served on the accused, proved, and entered on record. The board shall fill all vacancies which may occur from any cause.

Rev., s. 4197; Code, s. 2236; 1881, c. 211, s. 10.

5884. Employees. The superintendent, subject to the control of the board, shall have power to employ all employees and fix their compensation, and to discharge them at pleasure.

Rev., s. 4198; Code, s. 2237; 1881, c. 211, s. 11; 1917, c. 35, s. 1.

5885. When clothing, etc., for pupils paid for by state. Where it shall appear to the satisfaction of the governor, upon the affidavit of two respectable citizens, that the parents of any deaf-mute or blind child are unable to provide said child with clothing and for expenses to and from the institution, or where the child has no living parents or any estate of its own, then the governor shall draw upon the auditor for an amount sufficient to clothe him and pay said expenses, and the auditor, upon the state treasurer, who shall pay the same. The auditor shall charge said amount to the county from which said child came and add it to the tax list of the sheriff of said county and collect the same as other amounts due the state. The amount charged shall in no case exceed forty-five dollars per year for any pupil, in addition to such amount as may be required to defray all necessary traveling expenses of said pupil.

Rev., s. 4199; Code, s. 2238; 1879, c. 332, s. 1; Ex. Sess. 1908, c. 69; 1917, c. 35, s. 3; 1919, c. 183.

5886. Title to farm vested in directors. The farm of one hundred acres, now held by the said school, west of the city of Raleigh, shall be held in fee simple by the board of directors of said institution, to be improved, or used, or disposed of, or exchanged for lands more convenient, as the best interests of the said institution, in its judgment, may require or demand.

Rev., s. 4201; 1901, c. 707, s. 3.

5887. Annual appropriation for library and medical treatment. The sum of one hundred dollars is hereby appropriated annually for the library of the state school for the blind and the deaf; the further sum of five hundred dollars is

appropriated annually for the treatment of the eyes, ears, and throats of the pupils of the said school; and the further sum of five hundred dollars is appropriated annually for the treatment of the mouths and teeth of the pupils of the said school.

1913, c. 177.

ART. 11. NORTH CAROLINA SCHOOL FOR THE DEAF

5888. Incorporation and location. There shall be maintained a school for the white deaf children of the state which shall be a corporation under the corporate name of The North Carolina School for the Deaf, to be located upon the grounds donated for that purpose near the town of Morganton. The North Carolina school for the deaf shall be classed and defined as an educational institution.

Rev., s. 4202; 1891, c. 399, s. 1; 1915, c. 14.

5889. Directors; election; terms; vacancies. Such school shall be under the control and management of a board of directors consisting of seven members, who shall be appointed by the governor and hold their offices for the term of six years; said board shall be divided into three classes; the first class shall be elected in one thousand nine hundred and nine, the second class in one thousand nine hundred and seven, the third class in one thousand nine hundred and five, and each class shall thereafter be elected every six years. If any vacancy shall occur by death, removal, or other cause, the same shall be filled for the unexpired term by appointment of the governor. Said directors shall hold their office until their successors shall be elected and qualified, but not more than two of them shall be from the same county.

Rev., s. 4203; 1891, c. 399, s. 2; 1901, c. 210.

5890. Organization of board; other officials; salaries. The board of directors shall organize by appointing one of its number president and three an executive committee, who shall hold office for two years; they shall elect a superintendent, who shall be ex officio secretary of the board and whose term of office shall be three years, and such other officers, teachers, and agents as shall be deemed necessary. The compensation for officers, teachers, and agents shall be fixed by the board, and shall not be increased or reduced during their term of service.

Rev., s. 4206; 1893, c. 131, ss. 1, 2; 1915, c. 14.

5891. Superintendent. The superintendent shall be a teacher of knowledge, skill, and ability in his profession and experience in the management and instruction of the deaf. He shall possess good executive ability and shall be the chief executive officer of the institution. He shall devote his whole time to the supervision of the institution, and shall see that the pupils are properly instructed in the branches of learning and industrial pursuits as provided for in this article, and under the supervision of the board. The board shall elect all teachers and subordinate officers by and with the consent and recommendation of the superintendent.

Rev., s. 4206; 1893, c. 131, ss. 1, 2; 1915, c. 14.

5892. Pupils admitted; education. The board of directors shall, according to such reasonable regulations as it may prescribe, on application, receive into the

school for the purposes of education all white deaf children resident of the state not of confirmed immoral character, nor imbecile or unsound in mind or incapacitated by physical infirmity for useful instruction, who are between the ages of eight and twenty-three years. Only those who have been bona fide citizens of North Carolina for a period of two years shall be eligible to and entitled to receive free tuition and maintenance. The board of directors may fix charges and prescribe rules whereby nonresident deaf children may be admitted, but in no event shall the admission of nonresidents in any way prevent the attendance of any eligible deaf child, resident of North Carolina. The board shall provide for the instruction of all pupils in the branches of study now prescribed by law for the public schools of the state and in such other branches as may be of special benefit to the deaf. As soon as practicable, the boys shall be instructed and trained in such mechanical pursuits as may be suited to them, and in practical agriculture and subjects relating thereto; and the girls shall be instructed in sewing, housekeeping, and such arts and industrial branches as may be useful to them in making themselves self-supporting.

Rev., s. 4204; 1891, c. 399, ss. 7, 8; 1907, c. 929; 1915, c. 14.

5893. Powers of board. The board shall have power to make such by-laws, rules, and regulations, not inconsistent with the laws of the state, as may be necessary for the proper management of said school and its officers; and shall conduct the school in such way, as far as practicable, as to make it self-sustaining. The board is further authorized to make such arrangements with the board of directors of the state hospital at Morganton as may be agreed upon to promote convenience and economy for joint water supply and lighting arrangements.

Rev., s. 4205; 1891, c. 399, ss. 8, 9, 10.

ART. 12. THE CASWELL TRAINING SCHOOL

5894. Incorporation and general corporate powers. The Caswell Training School, formerly established as the North Carolina School for the Feeble-minded, by chapter eighty-seven of the public laws of nineteen hundred and eleven, shall be and remain a corporation invested with all property and rights of property heretofore held under the former name, and under this name may acquire and hold all such property as may be devised, bequeathed, or conveyed to it, and may use all the authority, privileges, and possessions that said corporation exercised under the former title and name, and shall be subject to all legal liability outstanding against it under the former title and name.

1915, c. 266, s. 1.

5895. Objects of the school. The purpose and aim of the Caswell training school is to segregate, care for, train, and educate, as their mentality will permit, the state's mental defectives; to disseminate knowledge concerning the extent, nature, and menace of mental deficiency; to suggest and initiate methods for its control, reduction, and ultimate eradication from our people; and to maintain an extension bureau for instructing the public in the care of the mental defectives who remain in their homes and for the after-care of discharged inmates of the institution; and to create and maintain a psychological clinic for the study and observation of mental defectives charged with crime, and to give expert advice in all cases of mental defect.

1919, c. 224, s. 1.

5896. Consolidated with hospitals for insane; directors. The management of the Caswell training school is hereby consolidated with the management of the state hospitals for the insane, and the governor is authorized, by and with the consent of the senate, to appoint three additional directors on the board of directors for the management of the consolidated institutions; and the three so appointed shall serve as an executive committee for the Caswell training school; one of said directors for two years, one for four years, and one for six years.

1919, c. 295, ss. 1, 2.

5897. State treasurer to keep accounts and pay out moneys. The state treasurer shall keep full accounts of said school and shall pay out all moneys upon the warrant of the superintendent thereof, countersigned by two members of the board of directors under such rules and regulations as the board of directors may establish.

1911, c. 87, s. 8; 1913, c. 191, s. 2; 1919, c. 295.

5898. Persons admitted; county commissioners to approve. There shall be received into the Caswell training school, subject to such rules and regulations as the board of directors may adopt, feeble-minded and idiotic boys and girls between the ages of six and twenty-one years, and feeble-minded women between the ages of twenty-one and thirty years who are not pregnant or helpless, and are not affected with any contagious or communicable disease. The person or persons making application for admission of said feeble-minded or idiotic person shall first obtain the written approval of the board of county commissioners of the county wherein said feeble-minded or idiotic person has a legal residence.

1911, c. 87, s. 3; 1915, c. 266, s. 2; 1919, c. 224, s. 2.

5899. Persons authorized to make application. The application for the admission of a child between the ages of six and twenty-one years shall be made, first, by the father, if the father and mother are living together; second, by the one having custody of the child, if the father and mother are not living together; third, by a guardian duly appointed; fourth, by the superintendent of any county home, or by the person having the management of any orphanage, association, charity, society, children's home workers, ministers, teachers, or physicians, or other institutions where children are cared for. Under items third and fourth, consent of parents, if living, is not required.

1915, c. 266, s. 3.

5900. Procedure for admission of adult females. 1. *Affidavit.* In case of females between the ages of twenty-one and thirty years, any responsible person residing in the county may file in the office of the clerk of the superior court of the county an affidavit stating that some woman of the county is not being properly maintained or cared for by those having such person in charge; that such woman is feeble-minded, and is over twenty-one and under thirty years, and is in good bodily health, and is not helpless, is not afflicted with any chronic or contagious disease; that she is a legal resident of the state and county where the

application is filed, together with such other statements as may be necessary to show that she is a proper person to be admitted to such institution, and that her admission thereto would be in conformity to the rules and regulations established by the board of directors for the admission and care of such person.

2. *Summons upon affidavit.* Upon the filing of the affidavit in the office of the clerk of the superior court by the proper person, the clerk shall issue a summons to such person named in the application or petition, requiring her to be and appear before said court, or the judge thereof, at some time to be fixed by the clerk, not more than ten days thereafter.

3. *Action upon affidavit.* The judge or clerk shall, as soon as convenient, pass upon said application or petition, and it shall be the duty of said court to examine such witnesses as may be necessary, among whom shall be at least one physician, to prove the truth or falsity of the statements in said application or petition.

4. *Order of commitment.* If the court finds that each and all of the allegations contained in said application or petition are true, and that said person is a proper person to be cared for in said institution, it shall be its duty to make an order committing the care and custody of said person to said institution.

5. *Transcript to superintendent; costs paid by county.* It shall be the duty of the clerk of said court to make a certified copy of said application or petition and the finding and judgment of said court, and transmit the same, together with a statement of such facts as can be ascertained concerning the personal and family history of such person, to the superintendent of the institution at Kinston, North Carolina. The costs of said proceedings shall be allowed and paid by the board of county commissioners of the county.

1915, c. 266, s. 4.

5901. Decision by superintendent and notice to clerk. Upon receipt of such order of commitment, it shall be the duty of the superintendent of the institution at once to consider the application and to determine whether or not said person shall be admitted to the institution, and to notify the clerk of the court of his decision, and if there is room for any more inmates, or as soon thereafter as there shall be room in the institution, to notify the clerk that such person will be received in the institution. With such notice the superintendent shall send a list of such clothing as shall be prescribed by the board of trustees of the institution, and a blank form of certificate of health and freedom of exposure to contagious disease at such time. In case the parents or custodian of such person shall be financially unable to furnish the clothing as required, the clerk shall procure the clothing at a cost not to exceed twenty dollars, and the payment for same shall be made out of the county treasury by the board of county commissioners upon the certificate of the clerk of the court.

1915, c. 266, s. 5.

5902. Conveyance to and from school upon discharge. Upon receiving notice that such person can be admitted to the institution, the clerk shall order the parents, custodian, or applicant to convey such person to the institution without expense to the institution or the county. In case such parents, custodian, or applicant is financially unable to bear such expense, the clerk shall cause the person to be conveyed to the institution in the same manner and in accordance

with the same forms as are now provided by law for the transfer of patients to insane hospitals, so far as they are applicable. And when any child or person, who is or has been an inmate of the institution, is dismissed or discharged from said institution in accordance with the rules and regulations of said institution, the parent or guardian of such child or person shall come, or send some responsible person, to receive said child or person and convey same to his or her legal residence, without cost to the institution; and in case the parent or guardian of said child or person is wholly unable to bear such expense, then the commissioners of said county shall allow such expense.

1915, c. 266, s. 6.

5903. Clothing and conveyance of children at cost of county. In case the parents of a child between the ages of six and twenty-one are wholly unable to bear the expense of furnishing the clothing of said child as required by the rules and regulations of the board of directors of said school, or of furnishing the money for transportation of such child to the school, it shall be the duty of the county from which the child is sent to bear such cost, in the manner provided for adults in the other sections of this article.

1915, c. 266, s. 7.

5904. Discharge of pupils. Any pupil of said school may be discharged or returned to his or her parents or guardian when in the judgment of the directors it will not be beneficial to such pupil, or will not be for the best interests of said school, to retain the pupil therein.

1915, c. 266, s. 9.

5905. Bond issue for establishment of school authorized. For the purpose of carrying out the provisions of this article a sum of money not exceeding sixty thousand dollars shall be appropriated to be used and expended for the purposes herein mentioned within the next two years, and the state treasurer is hereby authorized and directed to issue bonds of the State of North Carolina, payable forty years after the first day of July, one thousand nine hundred and eleven, to an amount not exceeding the sum of sixty thousand dollars, such bonds to be issued and sold, after due advertising, on the best obtainable terms from time to time as the money is needed to meet the expenses of building the institution. All of said bonds shall bear interest at a rate not exceeding four per cent per annum, from the date of issue until paid, which said interest shall be paid semiannually the first days of January and July of each and every year, so long as any portion of the said bonds shall remain due and unpaid. If in the progress of the work funds should be needed at a time when financial conditions should seem unfavorable for the sale of bonds, then, in his discretion, the state treasurer may, and he is hereby fully authorized, to negotiate a temporary loan or loans upon the best obtainable terms, and, if necessary, to pledge any of the unsold bonds as collateral therefor.

1911, c. 87, s. 9.

5906. Form of such bonds and coupons. The bonds authorized and directed to be issued by the preceding section shall be coupon bonds of the denomination

of one hundred dollars, five hundred dollars, and one thousand dollars each, as may be determined by said state treasurer, and shall be signed by the governor and the state treasurer, and shall be sealed with the great seal of the state. The coupons thereon may be signed by the state treasurer, or may have a facsimile of his signature printed, engraved, or lithographed thereon; and the said bonds shall in all other respects be in such form as the said state treasurer may direct.

1911, c. 87, s. 10.

5907. Bonds exempt from taxation. The said bonds and coupons shall be exempt from all state, county or municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purposes of general revenue or otherwise, and the interest paid thereon shall not be subject to taxation as for income, nor shall said bonds and coupons be subject to taxation when constituting a part of the surplus of any bank, trust company, or other corporation, but when constituting a part of such surplus shall be deducted from the total assets in order to ascertain the taxable value of such shares.

1911, c. 87, s. 11.

5908. State bonds for permanent improvements authorized. For the purpose of making permanent improvements to the Caswell training school at Kinston, North Carolina, the state treasurer is hereby authorized and directed to issue bonds of the state of North Carolina, payable ten years after the first day of July, one thousand nine hundred and seventeen, to an amount not to exceed the sum of seventy-five thousand dollars. The appropriation provided for in this section shall not interfere with other appropriations made by the general assembly of nineteen hundred and seventeen, but if the income of the state is insufficient to meet all appropriations the treasurer of the state is hereby directed to borrow sufficient funds to meet the appropriation provided for in this section.

1917, c. 269, ss. 1, 6.

5909. Interest on such bonds. All of said bonds shall bear interest at a rate not exceeding four per cent per annum from the first day of July, one thousand nine hundred and seventeen, until paid, which said interest shall be payable semiannually on the first day of January and July of each and every year so long as any portion of the said bonds shall remain due and unpaid.

1917, c. 269, s. 2.

5910. Terms of bonds and coupons; sale of bonds. The bonds authorized and directed to be issued by the preceding section shall be coupon bonds of the denomination of five hundred dollars and one thousand dollars each, as may be determined by the state treasurer, and they shall be signed by the governor and state treasurer and sealed with the great seal of the state. The coupons thereon may be signed by the state treasurer alone, or may have a facsimile of his signature printed, engraved, or lithographed thereon, and the bonds shall in all other respects be in such form as the state treasurer may direct; and the coupons thereon shall, after maturity, be receivable in payment of all taxes, debts, dues, licenses, fines, and demands due the state of North Carolina of any kind whatsoever, which shall be expressed on the face of the bonds. Before selling the bonds herein authorized to be issued, the treasurer shall advertise the sale and

invite sealed bids in such manner as in his judgment may seem to be most effectual to secure the best price. He is authorized to accept bids for the entire issue or any portion thereof, and when the conditions are equal, he shall give the preference of purchase to the citizens of North Carolina; and he is authorized to sell the bonds herein authorized in such manner as in his judgment will produce the best price.

1917, c. 269, s. 3.

5911. Bonds exempt from taxation. The said bonds and coupons shall be exempt from all state, county, or municipal taxation or assessment, direct or indirect, general or special, whether imposed for purpose of general revenue or otherwise, and the interest paid thereon shall not be subject to taxation as for income, nor shall said bonds and coupons be subject to taxation when constituting a part of the surplus of any bank, trust company, or other corporation.

1917, c. 269, s. 4.

5912. Expenditure of proceeds. All expenditures of the proceeds of these bonds shall be under the direction and control of the state building commission provided for by Article 1 of the chapter State Departments, Institutions and Commissions, under the same terms and provisions as are therein set out.

1917, c. 269, s. 7.

CHAPTER 97

ELECTIONS

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SUBCHAPTER I. GENERAL ELECTIONS

ART. 1. DEFINITIONS

5913. Political party defined. The words “political party,” as used in this subchapter, shall be construed to mean every such political party or organization whose candidate for governor received as many as fifty thousand votes in the election held August second, one thousand nine hundred.

Rev., s. 4292; 1901, c. 89, s. 85.

NOTE.—For definition of political party under primary law, see s. 6052.

This chapter supersedes all other statutes with respect to the same general effect: *State v. Edwards*, 134-636.

ART. 2. TIME OF ELECTIONS

5914. For state officers. On Tuesday next after the first Monday in November, in the year of our Lord one thousand nine hundred and four, and every four years thereafter, an election shall be held in the several election precincts in each county for the following officers: Governor, lieutenant-governor, secretary of state, auditor, treasurer, superintendent of public instruction, attorney-general, and other state officers whose terms last for four years, and at said time and every two years thereafter, elections shall be held in the several election precincts in each county for other state officers whose election is not otherwise provided for by law.

Rev., s. 4293; 1901, c. 89, s. 3.

5915. For presidential electors. On the Tuesday next after the first Monday in the month of November, in the year of our Lord one thousand nine hundred

and eight, and every four years thereafter, or on such days as the congress of the United States shall have directed, a poll shall be opened in each of the precincts of the state for the election of electors of president and vice-president of the United States, the number of whom is to be equal to the number of senators and representatives in congress to which this state may be entitled, and the persons shall be electors for the state as aforesaid, and the voting place in each ward or precinct shall be the same as in elections for members of the general assembly, unless changed by the county board of elections.

Rev., s. 4294; 1901, c. 89, s. 77.

5916. For president and vice-president, by electors. The persons elected and appointed as electors of the president and vice-president of the United States shall assemble on the second Monday of January, in the capitol at the city of Raleigh, and then and there give their votes on behalf of the state of North Carolina for president and vice-president of the United States, and proceed in relation thereto in all things conformably to the constitution of the United States and the acts of congress in that behalf.

Rev., s. 4295; 1901, c. 89, s. 82.

5917. For county officers, solicitors, and congressmen. On the Tuesday next after the first Monday in November, in the year of our Lord one thousand nine hundred and six, and every two years thereafter, an election shall be held in the several election precincts in each county for members of congress in the several districts, members of the general assembly for their respective counties and districts, a register of deeds, county surveyor, coroner, sheriff, county commissioners, where the county commissioners are elected by the people, and in such counties as have one, a county treasurer, and other officers whose terms are for two years. And on the said first Tuesday after the first Monday in November, in the year of our Lord one thousand nine hundred and six, and every four years thereafter, an election shall be held in each county for clerk of the superior court, and at such times an election shall be held in the several judicial districts for the office of solicitor.

Rev., s. 4296; 1901, c. 89, s. 1.

NOTE.—See, also, s. 6005.

For election of congressmen, see section 6005. Appointee to fill vacancy in office of clerk superior court holds only until next election of members of general assembly: *Rodwell v. Rowland*, 137-617.

5918. For township offices. On the first Tuesday after the first Monday in November, in the year of our Lord one thousand nine hundred and six, and every two years thereafter, an election shall be held in each township for the office of constable, and also for justices of the peace in such counties as elect them by a vote of the people, and all other officers elected by a vote of the township.

Rev., s. 4297; 1901, c. 89, s. 2.

Where legislature forms a new township and prescribes a time for election of officers, see *Brady v. Comrs.*, 74-101.

5919. Special election for members of general assembly. When a vacancy occurs in the general assembly by death, resignation, or otherwise, it shall be the

duty of the chairman of the county board of elections, or of the sheriff of the county in which the late member resided, provided the general assembly shall not be in session, to notify the governor of such vacancy, and in case the general assembly shall be in session when such vacancy occurs, it shall be the duty of the presiding officer in the house in which the vacancy occurs to notify the governor of the same, who shall thereupon issue a writ of election to the chairman or chairmen of the district or county represented by the late member, said election to be held at such time as the governor may designate, and in such manner as may be prescribed by law.

Rev., s. 4298; 1901, c. 89, s. 74.

5920. For vacancies in state offices. Whenever any vacancies shall exist by reason of death, resignation, or otherwise, in any of the following offices, to wit, secretary of state, auditor, treasurer, superintendent of public instruction, attorney-general, solicitor, justices of the supreme court, judges of the superior court, or any other state officer elected by the people, the same shall be filled by elections, to be held in the manner and places and under the same regulations and rules as prescribed for general elections, at the next regular election for members of the general assembly which shall occur more than thirty days after such vacancy, except as otherwise provided for in the constitution.

Rev., s. 4299; 1901, c. 89, ss. 4, 73.

General review of question as to how long appointees to fill vacancies hold offices, in *Rodwell v. Rowland*, 137-617.

As to term of office of judges of supreme and superior courts who have been appointed by the governor to fill vacancies, under Art. 4, sec. 25, of state constitution, see Appendix A of 114th report, page 923; also see cases cited under Const., Art. 4, sec. 25.

Where A. was elected judge of superior court and declined to accept office and qualify, held that there was a vacancy which the governor had power to fill: *Cloud v. Wilson*, 72-155.

General assembly has no power to order an election to fill vacancy in office of superior court judge, and any law for that purpose is unconstitutional and void: *Ibid*.

The words "until the next regular election" in sec. 31, Art. 4, of the constitution, mean until the next regular election for the office in which a vacancy has occurred: *Cloud v. Wilson*, 72-155; but see *Rodwell v. Rowland*, 137-617, in which this case is distinguished.

An appointment or an election to an office before the act creating it takes effect is invalid: *State v. Shuford*, 128-588; *Cook v. Meares*, 116-582.

ART. 3. STATE BOARD OF ELECTIONS

5921. Board appointed by governor; term of office. There shall be a state board of elections, consisting of five electors, whose terms of office shall begin on the first day of June, one thousand nine hundred and five, and continue for two years and until their successors are appointed and qualified. The governor shall appoint the members of this board, and not more than three of them shall be of the same political party. Their successors shall likewise be appointed by the governor, and their term of office shall continue for two years and until their successors are elected and qualified.

Rev., s. 4300; 1901, c. 89, s. 5.

5922. Meetings; vacancies; pay. The state board of elections shall meet in Raleigh on the first Monday in July, in the year nineteen hundred and six, and shall organize by electing one of its members chairman and another secre-

tary, and the chairman of said board may call such meetings as may be necessary to discharge the duties and functions imposed upon said board by this chapter at such times and places as he may appoint. Any vacancy occurring in the said board shall be filled by the governor, and the person so appointed shall fill the unexpired term. The members of the board shall receive in full compensation for their services four dollars per day for the time they are actually engaged in the discharge of their duties, together with their actual traveling expenses, and such other expenses as are necessary and incidental to the discharge of the duties imposed by this chapter.

Rev., ss. 2760, 4301; 1901, c. 89, s. 7.

5923. Called meetings; authority; quorum. The chairman of the state board of elections shall call a meeting of the board upon the application in writing of any two members thereof, or if there be no chairman, or the chairman does not call such meeting, any three members of the said board shall have power to call a meeting of the board. And any duty imposed or power conferred by this chapter may be performed or exercised at such meeting, although the time for performing or exercising the same prescribed by this chapter may have expired. And if at any meeting any member of said board shall fail to attend, and by reason thereof there is a failure of a quorum, the members attending shall adjourn from day to day, for not more than two days, at the end of which time, if there should be no quorum, the governor may remove the members so failing to attend summarily and appoint their successors.

Rev., s. 4302; 1901, c. 89, s. 7.

ART. 4. COUNTY BOARD OF ELECTIONS

5924. County board; membership; appointment; qualifications. There shall be in every county in the state a county board of elections to consist of three persons of good moral character, who are electors in the county in which they are to act, who shall be appointed by the state board of elections at least three months before the next general state election, and biennially thereafter, and whose terms of office shall continue for two years from the time of their appointment and until their successors are appointed and qualified, unless sooner removed therefrom as hereinafter provided. Not more than two members of the county board of elections shall belong to the same political party, and the state chairman of each political party shall have the right to recommend three electors in each county, and it shall be the duty of the state board of elections to appoint said county board from the names thus recommended: Provided, that said chairmen shall recommend such persons on or before the first Monday of August of each year in which appointments are to be made.

Rev., s. 4303; 1901, c. 89, s. 6.

5925. Meetings and organization. It shall be the duty of the county board of elections to meet in their respective counties not later than the first Monday in September, in the year of our Lord one thousand nine hundred and six, and biennially thereafter, and, a majority being present, they shall organize by

electing one of its members chairman and another secretary, and it may meet at such other times and places as the chairman of said board, or any two members thereof, may direct to divide their respective counties into election precincts and fix the polling places.

Rev., s. 4304; 1901, c. 89, s. 11.

5926. To establish or change polling places; new polling book and registration. The county board of elections may, in their respective counties, adopt the present election precincts, or they may establish new precincts, but the election precincts and polling places as now fixed in each county shall remain as they now are until altered. In the case of the alteration of the election precincts or polling places therein, they shall give twenty days notice thereof, in some public journal, or, in lieu thereof, in three public places in such county and at the courthouse door. And the county board of elections shall have power from time to time, after dividing their counties into election precincts, to establish, alter, discontinue, or create such new election precincts in their respective counties as they may deem expedient, giving twenty days notice thereof, by advertising in some public journal, or, in lieu thereof, in three public places in such county and at the courthouse door. If any polling place is changed in any precinct, like advertisement of such change shall be given. And there shall be at least one polling place in every township, conveniently located for a majority of the voters. The county board of elections shall have power from time to time to order a revision of the polling book of any precinct in any township and to order a new registration for any precinct; and if and when a new registration is ordered notice shall be given as hereinbefore provided for the alteration of an election precinct or polling place.

Rev., s. 4305; 1901, c. 89, s. 11; 1913, c. 138.

A notice that an election will be held “at the various precincts as they are now established” is sufficient, when the polling places have been fixed and used in previous elections: *Comrs. v. Trust Co.*, 164-301.

Where, in a division of a city into precincts, some voters are left out of the precinct lines, the election is void: *Van Bokkelen v. Canady*, 73-198. The registrar has no authority to erase the name of a person who is on the registration list and qualified to vote: *Williams v. Comrs.*, 176-554; *Casey v. Dare County*, 168-285.

5927. Books and stationery furnished to county board. The county board of elections shall make their requisition upon the secretary of state for such books, blanks, and stationery as may be necessary for the registration of voters and holding elections in their respective counties. And if the secretary of state shall fail to provide said books, blanks, or stationery, it shall be the duty of the said board to provide the same at the expense of the state.

Rev., s. 4306; 1901, c. 89, s. 11.

5928. To appoint registrars and judges of election. The county board of elections in each county shall appoint all registrars and judges of election in their respective counties, and fill vacancies except as herein provided.

Rev., s. 4307; 1901, c. 89, s. 8.

5929. Appointment of registrars regulated; vacancies filled. The county board of elections of the several counties shall select, on or before the first Monday in September, in the year of our Lord one thousand nine hundred and six, and

biennially thereafter, one person of good repute and standing, who shall act as registrar for each township, ward, or precinct. The said county board of elections shall make publication of the names of the persons so selected at the courthouse door immediately after such appointment, and shall cause a notice to be served upon said persons by the sheriff. If any registrar fail to perform the duties of his office, and for that or for any other cause be removed from office, or shall die or resign, or if there shall for any other cause be a vacancy in said office, the chairman of the county board of elections may appoint another in his place. No person who is a candidate shall be a registrar or judge of election.

Rev., s. 4308; 1901, c. 89, s. 16.

County chairman of political party did not have right to designate the registrar under act of 1897: *Mullen v. Morrow*, 123-773.
For qualifications of registrar under act of 1897, see *Ibid.*

5930. How vacancies in county board filled. The state board of elections shall have power to remove from office any member of the county board of elections for incompetency, failure of duty, or for any other satisfactory cause. When any member of the county board of elections shall be removed by the state board of elections, the vacancy thus created shall be filled by the state board of elections; the vacancy occurring in the county board of elections for other cause than removal by the state board of elections shall be filled by the chairman of the state board of elections, but the person so appointed to fill any vacancy shall be of the same political party as his predecessor.

Rev., s. 4309; 1901, c. 89, s. 9.

5931. Removal of registrars and judges of election. The county board of elections shall have power to remove any registrar or judge of election appointed by it for incompetency, failure to qualify within the time prescribed by law, failure to discharge the duties of office after qualifying, or for any other satisfactory cause.

Rev., s. 4310; 1901, c. 89, s. 10.

As to cause for removal under act of 1897, see *Mullen v. Morrow*, 123-773.

5932. Election returns transmitted to speaker of house. The chairman of the county board of elections, or other returning officer of each county, shall, on or before the fifth day after the election, transmit by mail, in a registered letter or otherwise, to the speaker of the house of representatives, a separate statement of the votes taken in his county for each of the state officers, to wit: governor, lieutenant-governor, secretary of state, auditor, treasurer, superintendent of public instruction, and attorney-general, and other state officers; which statement in each case shall be in the following or some similar form, viz.:

STATE OF NORTH CAROLINA.....COUNTY.

I,, the chairman of the county board of elections of county, do hereby certify that at the election held in the said county to elect a governor (or other officers, as the case may be), at the places appointed by law for holding elections for said county, on the day of, A. D. one thousand nine hundred and, votes were given for, and..... votes for.....

Given under my hand, this day of, nineteen hundred and

.....
Chairman of the County Board of Elections.

If such statements are transmitted by mail, they shall be directed in sealed packets to the speaker of the house of representatives, in care of the secretary of state, and, if by messengers, they shall be sent direct to the speaker of the house of representatives, sealed as aforesaid: Provided, that no messenger bringing said statements or any other abstracts or election returns shall receive compensation therefor. The chairman of the county board of elections, or other returning officers, failing or neglecting to perform the duties required in this section, shall forfeit and pay two thousand dollars, to be recovered in the superior court of his county by any person who shall sue for the same, and shall be guilty of a misdemeanor, and imprisoned at hard labor in the state's prison for twelve months: Provided further, that the chairman of the county board of elections of Carteret, Hyde, and Dare shall have until the eleventh day after the election to comply with this section.

Rev., s. 4311; 1901, c. 89, s. 42.

5933. Chairman to furnish county officers certificate of election. The chairman of the county board of elections of each county shall furnish, within ten days, the member or members elected to the house of representatives and to the senate, when the district is not composed of more than one county, a certificate of election under his hand and seal. He shall also immediately notify all persons elected to the county offices to meet at the courthouse on the first Monday in the ensuing December to be qualified.

Rev., s. 4312; 1901, c. 89, s. 41.

Certificate of county canvassers is conclusive upon county commissioners as to one's right to be inducted into a county office: Hannon v. Grizzard, 96-293.

5934. Where chairmen meet in senatorial districts. The chairmen of the county boards of elections in the various senatorial districts composed of more than one county, after receiving the returns from the board of county canvassers, shall meet on the ninth day after election at the following places in their respective districts for the purpose of comparing polls:

In the first district at Hertford, in the county of Perquimans.
 In the second district at Plymouth, in the county of Washington.
 In the third district at Roxobel, in the county of Bertie.
 In the fourth district at Halifax, in the county of Halifax.
 In the sixth district at Rocky Mount, in the county of Nash.
 In the seventh district at New Bern, in the county of Craven.
 In the ninth district at Wallace, in the county of Duplin.
 In the tenth district at Wilmington, in the county of New Hanover.
 In the eleventh district at Clarkton, in the county of Bladen.
 In the thirteenth district at Fayetteville, in the county of Cumberland.
 In the fourteenth district at Dunn, in the county of Harnett.
 In the sixteenth district at Norlina, in the county of Warren.
 In the seventeenth district at Berea, in the county of Granville.
 In the eighteenth district at Hillsboro, in the county of Orange.
 In the twenty-first district at Aberdeen, in the county of Moore.
 In the twenty-second district at Asheboro, in the county of Randolph.

In the twenty-third district at Norwood, in the county of Stanly.
In the twenty-fourth district at Charlotte, in the county of Meeklenburg.
In the twenty-seventh district at Pilot Mountain, in the county of Surry.
In the twenty-eighth district at Yadkinville, in the county of Yadkin.
In the thirtieth district at Maiden, in the county of Catawba.
In the thirty-second district at Rutherfordton, in the county of Rutherford.
In the thirty-third district at Morganton, in the county of Burke.
In the thirty-fourth district at Jefferson, in the county of Ashe.
In the thirty-fifth district at Burnsville, in the county of Yancey.
In the thirty-seventh district at Sylva, in the county of Jackson.
In the thirty-eighth district at Murphy, in the county of Cherokee.

Rev., s. 4313; 1913, c. 53.

5935. Chairmen to issue certificate to senator elected. Said chairmen or a majority of them after they shall have thus completed the comparison of the polls shall judicially determine the result of the election in said senatorial district, and shall issue a certificate of election substantially as follows:

STATE OF NORTH CAROLINA—COUNTY OF.....

We,, chairman of the county board of elections of..... county;, chairman of the county board of elections of..... county;, chairman of the county board of elections of..... county; and, chairman of the county board of elections of..... county, do hereby certify that we met in pursuance to law at the courthouse in the town of, on the day of November,, being the ninth day after the general election, and after comparing the polls we find that—

..... received votes.
..... received votes.
..... received votes.
..... received votes.

We therefore declare that and have received a majority of the votes and are duly elected as senators from the senatorial district of North Carolina.

Witness our hands and seals, this day of November, 19....

..... (Seal.)
..... (Seal.)
..... (Seal.)
..... (Seal.)

If for any cause a majority of said chairmen should fail to be present, those present shall adjourn for one week and give notice of such adjournment to the absent chairmen, which notice shall be served by the sheriff of the county where such chairmen may reside: Provided, however, if any such chairmen shall be incapacitated by sickness from attending, it shall be the duty of the secretary of the board to attend in place of such chairmen and exercise the power conferred by this section upon such chairmen. Said chairmen or a majority of them shall certify under their hands to the secretary of state, upon blanks furnished by him for that purpose, a list of the names of the persons voted for in said district for senator, together with the votes cast for each, and their postoffice addresses.

Rev., s. 4314; 1905, c. 510; 1909, c. 894.

ART. 5. QUALIFICATION OF VOTERS

5936. Persons excluded from electoral franchise. The following classes of persons shall not be allowed to register or vote in this state, to wit: First, persons under twenty-one years of age; second, idiots and lunatics; third, persons who have been convicted or confessed their guilt in open court, upon indictment, of any crime the punishment of which is now or may hereafter be imprisonment in the state's prison, unless such person shall have been restored to citizenship in the manner prescribed by law.

Rev., s. 4315; 1901, c. 89, s. 14.

For restoration to citizenship, see section 385 et seq.

Record of indictment and conviction of a voter of a crime previous to election is admissible to show that he voted fraudulently: *Boyer v. Teague*, 106-576.

Registrar has no right to ask person offering to register if he has ever been convicted of an infamous crime: *In re Reid*, 26-337.

5937. Qualifications of electors. Subject to the exceptions contained in the preceding section, every male person who has been naturalized, twenty-one years of age, a citizen of the state of North Carolina, who shall have resided two years in the state and six months in the county, and four months in the precinct, ward, or election district in which he offers to vote next preceding the election, shall, if otherwise qualified, as prescribed in this chapter, be a qualified elector in the precinct, ward, or township in which he resides: Provided, that removal from one ward, precinct, or other election district to another in the same county shall not operate to deprive any person of the right to vote in the precinct, ward, or other election district from which he has removed until four months after such removal, and all electors shall register and vote in the election precinct of their residence, except in case of removal, as above specified, in which case such person shall register in the township, ward, or precinct whence he has removed. The residence of a married man shall be where his family resides, and that of a single man where he sleeps. And it shall be the duty of the registrar or judge of election, when requested by any bystander, to swear any person offering to register, as to his residence, and to have placed in writing opposite his name the word "Sworn."

Rev., s. 4316; 1901, c. 89, s. 15.

Cities and towns, like counties and townships, are parts of the state, organized for the convenience of local self-government; and the qualifications of voters are the same, to wit: citizenship, twenty-one years of age, twelve months (now two years) residence in the state, and thirty days (now four months) in city or town: *Van Bokkelen v. Canady*, 73-198; *Echerd v. Viele*, 164-122.

See annotations as to who are qualified voters, under section 5938. See, also, annotations under section 5940.

5938. Registration a prerequisite. Only such persons as are registered shall be entitled to vote in any election held under this chapter.

Rev., s. 4317; 1901, c. 89, s. 12.

Compliance with this requirement is mandatory: *Smith v. Wilmington*, 98-343. A voter who has been duly registered cannot be deprived of his right to vote, nor will he lose his character as a "qualified voter" by a failure to reregister, unless a new registration is made in pursuance of plain requirements of law: *Ibid.* Registration of an elector, who is qualified to vote, must be accepted as the act of a public officer, and entitles elector to cast his vote: *DeBerry v. Nicholson*, 102-465.

Registration is essential to the exercise by a citizen, possessed of the other legal qualifications, of his right to vote, and when duly made is prima facie evidence of the right: *Hampton v. Waldrop*, 104-453; *Smith v. Wilmington*, 98-343. When a voter's name is properly on the registration book, it cannot be erased by the registrar simply at the request of the voter: *Williams v. Comrs.*, 176-554.

As to new registration, see *Cox v. Comrs.*, 146-586, and cases cited.

Registration list is prima facie evidence of who are qualified voters: *Clark v. Statesville*, 139-490. A qualified voter is one who is entitled to register as a voter, and who is also qualified to vote after such registration: *Railroad v. Caldwell*, 72-492, 493—a registered voter being one who has lawfully registered and paid his poll tax, *Pace v. Raleigh*, 140-65; *Echerd v. Viele*, 164-122. Voter must register anew, when so required, in order to be a qualified voter: *Clark v. Statesville*, 139-490. Other cases on the subject are: *Harris v. Scarborough*, 110-232; *Smith v. Wilmington*, 98-343; *Wood v. Oxford*, 97-233; *McDowell v. Construction Co.*, 96-514; *Markham v. Manning*, 96-132; *Duke v. Brown*, 96-127; *Southerland v. Goldsboro*, 96-49.

ART. 6. REGISTRATION OF VOTERS

5939. Voter must be able to read and write; exceptions. Every person presenting himself for registration shall be able to read and write any section of the constitution in the English language, and shall show to the satisfaction of the registrar his ability to read and write any such section when he applies for registration, and before he is registered: Provided, however, that no male person who was, on January first, one thousand eight hundred and sixty-seven, or at any time prior thereto, entitled to vote under the laws of any state in the United States where he then resided, and no lineal descendant of such person, shall be denied the right to register and vote at any election in this state by reason of his failure to possess the educational qualification aforesaid: Provided, that it shall be made to appear to the registrar that he or his ancestor was entitled to vote prior to January first, one thousand eight hundred and sixty-seven, in any state in the United States, as prescribed by article six, section four, of the constitution, and such person, if otherwise qualified, shall be registered, and no registrar shall have the right to inquire whether such person can read or write.

Rev., s. 4318; 1901, c. 89, s. 12.

5940. Qualifications as to residence for voters; oath to be taken. In all cases the applicant for registration shall be sworn before being registered, and shall state as accurately as possible his name, age, place of birth, place of residence, stating ward if he resides in an incorporated town or city; and any other questions which may be material upon the question of identity and qualification of the said applicant to be admitted to registration. The registrar, if in doubt as to the right of the applicant to register, may require other evidence satisfactory to him as to the qualification of the applicant. And thereupon, if the applicant shall be found to be duly qualified and entitled to be registered as an elector, the registrar shall register the applicant, giving his race opposite his name, and shall record his name, age, residence, place of birth, and the township, county, or state from whence he has removed, in the event of a removal, in the appropriate column of the registration books, and the registration books containing the said record shall be evidence against the applicant in any court of law in a proceeding for false or fraudulent registration. Every person qualified as an elector shall take the following oath:

I do solemnly swear (or affirm) that I will support the constitution of the United States, and the constitution of the state of North Carolina not inconsistent therewith;

that I have been a resident of the state of North Carolina for two years, and of the county of for six months, and of township (precinct or ward) for four months; or that I was a resident of township (ward or precinct) on the day of (being four months preceding the election) and removed therefrom to township (ward or precinct), where I have since resided; that I am twenty-one years of age; that I have not registered for this election in any other ward or precinct or township. So help me, God.

And thereupon the said person, if otherwise qualified, shall be entitled to register.

Rev., s. 4319; 1901, c. 89, s. 12.

Power of legislature to enact registration laws: *Harris v. Scarborough*, 110-232. Statutes which prescribe registration as a qualification for voting are mandatory, and the officers charged with the enforcement of the law have no authority to dispense with such requisite: *Smith v. Wilmington*, 98-343; *Hardee v. Henderson*, 170-572; *Hill v. Skinner*, 169-405, and cases cited. Only the forms which affect the merits are essential to the validity of an election or the registration of an elector: *DeBerry v. Nicholson*, 102-465.

An election held, where no opportunity is given the citizens to register, is void: *Perry v. Whitaker*, 71-475. Failure to give a voter an opportunity to register will invalidate the election if his vote would have affected the result: *McDowell v. Construction Co.*, 96-514; *Hendersonville v. Jordan*, 150-35.

Where the voter offers to comply with the law for registration, but is prevented by the wrongful act of the registrar, he is entitled to vote, but a vote cast upon an invalid registration should be rejected: *Harris v. Scarborough*, 110-232. Failure to administer the oath to a voter is an irregularity which will not deprive him of his right to vote: *Woodall v. Highway Com.*, 176-377; *Gibson v. Comrs.*, 163-510; *Quinn v. Lattimore*, 120-426.

As to the duty of the registrar and of the applicant for registration, see *Harris v. Scarborough*, 110-232, modified and overruled in part by *Quinn v. Lattimore*, 120-426.

The oath prescribed in The Code, section 2681, was held to be a sufficient compliance with the constitution, article 6, sec. 2: *Deberry v. Nicholson*, 102-465.

The registrar under a private act is a judge to decide who is entitled to register up to the day of election, and he is not liable criminally for error in judgment: *State v. Powers*, 75-281.

A board of county canvassers, under election law of 1877, c. 275, had no authority to revise registration or to examine into the qualifications of those who voted or who were not allowed to vote: *Peebles v. Comrs.*, 82-385.

If a division of the city into precincts leaves some of the citizens out of the precinct lines, the election is void: *Van Bokkelen v. Canady*, 73-198. So much of the city charter as requires a voter, when challenged, to prove by other persons of credibility, known to the registrar, that he has the requirements as to age, residence, etc., is void: *Ibid.*

RESIDENCE UNDER FORMER STATUTES. "Residence," as used in the constitution, defining political rights, is synonymous with domicile, denoting a permanent dwelling place, to which the party, when absent, intends to return: *Hannon v. Grizzard*, 89-115. A protracted residence abroad of one engaged in business and with no home in this state, is not consistent with the idea of a residence here: *Ibid.* Plaintiff was in the service of federal government at Washington, but continued to pay poll tax and vote in this state, and spent a part of each year at his home here: Held, that his constitutional residence remained unchanged: *Ibid.*

If in reply to questions by registrar elector answers that he is twenty-one years old, and has resided in state twelve months (now two years) and in county ninety days (now six months) preceding election, it is duty of registrar, upon his taking the prescribed oath, to record his name as a voter; but bystanders may require him to be sworn as to his residence: *In re Reid*, 119-641.

IRREGULARITIES. The presumption is in favor of the validity of an election: *Woodall v. Highway Com.*, 176-377; *Hardee v. Henderson*, 170-572; *Hill v. Skinner*, 169-405.

An irregularity which does not deprive a voter of his right or admit a disqualified person to vote, which casts no uncertainty on the result, and which was not brought about by one interested in the result, will be disregarded: *Hill v. Skinner*, 169-405; *Briggs v. Raleigh*, 166-149; *Younts v. Comrs.*, 151-582. Vote given at a polling place must not be rejected because of a disregard of those directions contained in constitution or statutes (except as

to time and place of holding election) the nonobservance of which amount to mere irregularity. The same principle governs registration of electors: *DeBerry v. Nicholson*, 102-465.

Where a registrar gave notice that registration of voters would take place at his residence, but kept books and actually registered names at his store some 300 yards distant, he having left word at house for persons applying there to come to store, it was held that irregularity did not vitiate registration and the election held under it: *Newsom v. Earnheart*, 86-391.

Where registration book had been lost, and could not be replaced, but registrar procured new book, in which he entered names of such persons as he knew had theretofore been registered, and also the names of those who applied for registration subsequently, and it appeared that, at election following, no one voted whose name did not appear on registration book, that no one voted who was not entitled to vote, and no one who was entitled to vote was excluded: Held, that election was not invalid: *Hampton v. Waldrop*, 104-453.

Where person entitled to be registered was registered by one with whom registrar left books, and such registration was accepted as sufficient by registrar and acted on by judges of election, the vote of such person will not be rejected for such irregularity: *Quinn v. Lattimore*, 120-426.

Where qualified voters living near dividing line of two townships, which line was not definitely located, in good faith registered and voted in township in which they did not actually reside, but it appeared that they had listed their property for taxation, sent their children to school, and for many years previous had registered and voted in the same township: Held, that the votes of such electors, having been cast, must be counted: *Quinn v. Lattimore*, 120-426, overruling *Harris v. Scarborough*, 110-232.

Where it appears that the registrar administered the prescribed oath to electors, but that he did not swear them on the Bible, it will be inferred, in the absence of direct proof to the contrary, that the oath was taken with uplifted hand. Administering oath in such manner is sufficient to meet requirements of election law: *DeBerry v. Nicholson*, 102-465; see *State v. Houston*, 103-383.

Where judges of election received ballot of a person entitled to vote, who had, in proper time, presented himself for registration and taken required oath, but whose name, through inadvertence or fault of registrar, had not been entered on registration books: Held, that vote of such person must be counted: *Quinn v. Lattimore*, 120-426; *Gibson v. Comrs.*, 163-510.

5941. Poll tax must be paid before person can vote; receipt exhibited. No person shall be entitled to vote unless he shall have paid his poll tax for the previous year, on or before the first day of May of the year in which he offers to vote, as prescribed under article five, section one, of the constitution. Every person liable for such poll tax shall, before being allowed to vote, exhibit to the registrar his poll tax receipt for the previous year, issued under the hand of the sheriff or tax collector of the county or township where he then resided; and unless such poll tax receipt shall bear date on or before the first day of May of the year in which he offers to vote, such person shall not be allowed to vote: Provided, that in lieu of such poll tax receipt it shall be competent for the registrar and judges of election to allow such person to vote upon his taking and subscribing the following oath:

NORTH CAROLINA, COUNTY.

I do solemnly swear (or affirm) that on or before the first day of May of this year I paid my poll tax for the previous year, as required by article six, section four, of the constitution of North Carolina.

Sworn to and subscribed before me, this the day of, 19...

.....
Registrar.

Which oath shall bear date on the day on which such election is held: Provided further, that if not satisfied, the registrar and judges of election may require other and further proof of such payment of poll tax.

Rev., s. 4320; 1901, c. 89, s. 13.

The poll tax referred to is that for general state and county purposes, which cannot exceed \$2: *Perry v. Comrs.*, 148-521.

5942. Who may vote without paying poll tax. No person who has become of age since the first day of June of the previous year, or who was fifty years of age or over on the first day of June of the previous year, shall be required to produce any poll tax receipt, or take the oath as to payment of poll tax hereinbefore provided, in order to vote. No person who has been exempted by the commissioners of the county wherein he resides on account of poverty or infirmity shall be required to produce any poll tax receipt or to take said oath as to payment of poll tax in order to vote. No person shall be allowed to vote on any exemption granted by the board of commissioners unless the same shall have been granted on or before the first day of May of the year in which he offers to vote, and bears date on or before said date.

Rev., s. 4321; 1901, c. 89, s. 13; 1903, c. 479.

5943. Sheriff to give receipt for poll tax. Every sheriff or tax collector, upon payment of the poll tax, shall issue to the person paying the same a certificate showing the amount of such poll tax and the true date upon which the same was paid.

Rev., s. 4378; 1901, c. 89, s. 13.

5944. Sheriff to give duplicate when receipt lost. Any person having paid his poll tax as required by law, and having lost his tax receipt, shall, upon making affidavit of such loss and satisfactory proof of his identity, be entitled to a duplicate thereof from the sheriff or tax collector.

Rev., s. 4379; 1901, c. 89, s. 13.

5945. Annual list of persons paying poll tax prepared and certified. It shall be the duty of every sheriff and tax collector, between the first and tenth days of May of each year in which a general election occurs, to certify under oath a true and correct list of all persons who have paid their poll tax for the previous year on or before the first day of May, to the clerk of the superior court, who shall, within ten days, record the same in a book to be provided for that purpose, keeping each township separate, and certify a true copy thereof to the chairman of the board of elections for such county.

Rev., s. 4380; 1901, c. 89, s. 13.

5946. When person can register on election day. No registration shall be allowed on the day of election, but if any person shall give satisfactory evidence to the registrar and judges of election that he has become qualified to register and vote after the time for registration has expired, he shall be allowed to register on that date.

Rev., s. 4322; 1901, c. 89, s. 21.

One who becomes qualified on election day, by reason of his having lived in the state the required time, should be allowed to register on election day: *Quinn v. Lattimore*, 120-426.

5947. Time when registration books must be open; oath of registrar. The registrar of each township, ward, or precinct shall be furnished with a registration book prepared as hereinbefore provided, and it shall be his duty, between the hours of nine o'clock a. m. and sunset, on each day (Sunday excepted) for twenty

days preceding the day for closing the registration books, as hereinafter provided, to keep open said books for the registration of any electors residing within such township, ward, or precinct and entitled to registration. The said books shall be closed for registration at sunset on the second Saturday before each election. On each Saturday during the period of registration the registrar shall attend with his registration books at the polling place of his precinct or ward for the registration of voters. Every registrar, before entering upon the discharge of the duties of his office, shall take an oath before a justice of the peace or some other person authorized to administer oaths, that he will support the constitution of the United States and the constitution of North Carolina not inconsistent therewith, and that he will honestly and impartially discharge the duties of registrar, and honestly and fairly conduct such election.

Rev., s. 4323; 1901, c. 89, s. 18.

See annotations under section 5940. The registrar need not be at place of registration every hour of the twenty days specified; an absence of two days would not make void the election when every voter has had a fair opportunity to register: *Younts v. Comrs.*, 151-582. See, also, *Hill v. Skinner*, 169-405, where the registration books were open eight days.

5948. Registration books deposited with register of deeds. Immediately after any election, the registrar and judges of election shall deposit the registration books for their respective precincts with the register of deeds of their respective counties.

Rev., s. 4324; 1901, c. 89, s. 25.

ART. 7. PERMANENT REGISTRATION

5949. Persons entitled to permanent registration. Every person claiming the benefit of section four of article six of the constitution of North Carolina, as ratified at the general election on the second day of August, one thousand nine hundred, and who shall be entitled to register upon the permanent record for registration provided for under said section four, shall, prior to December first, one thousand nine hundred and eight, apply for registration to the officer charged with the registration of voters as prescribed by law in each regular election to be held in the state for members of the general assembly, and such person shall take and subscribe before such officer an oath in the following form, viz.:

I am a citizen of the United States and of the state of North Carolina; I am years of age. I was, on the first day of January, A. D. one thousand eight hundred and sixty-seven, or prior to said date, entitled to vote under the constitution and laws of the state of, in which I then resided (or, I am a lineal descendant of, who was, on January one, one thousand eight hundred and sixty-seven, or prior to that date, entitled to vote under the constitution and laws of the state of, wherein he then resided).

Rev., s. 4325; 1901, c. 550, s. 1.

Fact that voter is registered on permanent roll as provided by constitution does not dispense with necessity of registering anew in order to become qualified voter, whenever required by statutes regulating registration of voters: *Clark v. Statesville*, 139-490.

5950. Oaths administered; names recorded. It shall be the duty of the officer charged with the registration of voters in all such elections held in this state until November first, one thousand nine hundred and eight, to administer such oaths and to record the name of such person on his roll of registered and quali-

fied voters; and all registration under this chapter and under the said section of the constitution shall be had and taken at the times and places provided by law for registration of voters for all such elections in this state until November first, one thousand nine hundred and eight.

Rev., s. 4326; 1901, c. 550, s. 2.

5951. Registrar to return list to clerk of court; record. It shall be the duty of such registration officer, within five days after the close of the election, to return to the clerk of the superior court of the county in which he resides a list of the names of all the persons so registered by him, stating therein the name and age of such person, and the name of the person from whom descended, unless he himself was a voter on January first, one thousand eight hundred and sixty-seven, or prior thereto, and the state wherein he or his ancestor was a voter, and the date on which he applied for registration, and it shall be the duty of the clerk of the superior court, within ten days after receipt of said list, to make an alphabetical roll by townships of all persons taking such oath and registered by such registrar, and to record the same in a book to be provided for that purpose, which said book shall contain the name and age of such person, the name of the person from whom he was descended, unless he himself was a voter on January first, one thousand eight hundred and sixty-seven, or prior thereto, the state in which he was such voter and the date he applied for registration. And the said roll shall, during the office hours of said clerk, be open to the inspection of the public.

Rev., s. 4327; 1901, c. 550, s. 3; 1903, c. 557.

5952. Clerks to certify list to secretary of state. It shall be the duty of the several clerks of the superior courts of this state to certify to the secretary of state, within thirty days after the close of each election, a copy of the said roll in his office, and it shall be the duty of the secretary of state to record, in a book provided for that purpose, the facts set out in such certified copy, and keep the lists from each county separate. The clerk of the superior court shall keep the lists from each township in separate columns. The books kept by such clerks and the secretary of state shall be plainly lettered "Permanent Roll of Registered Voters," and they shall prepare a complete alphabetical index to the same. And for recording and indexing such names the clerks of the superior courts shall receive as compensation ten cents for each copy-sheet, to be paid by the county commissioners.

Rev., s. 4328; 1901, c. 550, s. 4; 1903, c. 557, s. 2.

5953. How permanent roll prepared and certified; certified copies from roll. It shall be the duty of all officers charged with the registration of voters in any election held in the state to enter the name of such person on the registration book and voting lists of his township, ward, or precinct, and to give a certificate in the following form:

I,, registrar for township (ward or precinct) of county, do hereby certify that on this day of race, of county, township, precinct (or ward), age years, took and subscribed the oath required by law, and has this day been registered on the permanent roll as a voter in said township (ward

or precinct), in accordance with section four, article six, of the constitution of North Carolina.

This the day of, 19....
Registrar.

And it shall be the duty of the clerk of the superior court to certify, under his hand and seal, to the genuineness of such certificate as follows:

NORTH CAROLINA, COUNTY.

I,, clerk of the superior court of the aforesaid county, do hereby certify that the foregoing certificate is in due form, and that the signature of said, registrar of said precinct (ward or township), is in his own proper handwriting.

Witness my hand and official seal, this the day of, 19....
Clerk of the Superior Court.

And for furnishing such certificates and administering such oaths neither the said registrar nor clerk shall be paid any compensation by the person so applying for registration. In the event of the loss of such certificate the person entitled to the same, upon the payment of twenty-five cents, may obtain from the clerk of the superior court, or from the secretary of state, a certificate under his official seal to the effect that his name is on the permanent roll of registered voters from his county, in his office, and such certificate shall, in all respects, take the place of such original, and be used as such.

Rev., s. 4329; 1901, c. 550, s. 5.

5954. When copy of roll obtainable by clerk from secretary of state. In the event of loss or destruction of such rolls in the clerk's office, it shall be his duty to obtain from the secretary of state a certified copy of said roll for his county, and such certified copy shall be good and effectual for all purposes as the original would have been.

Rev., s. 4330; 1901, c. 550, s. 6.

5955. Copy of, or certificate from roll evidence of voter's rights. In all suits involving the right to vote, or trying the title to office, or other action in which such rolls are produced in evidence, all of the facts and recitals therein shall be taken as prima facie evidence of such facts and recitals, and if the right of any voter upon such rolls to vote is challenged, either his certificate or a certified copy of such permanent roll shall be deemed prima facie evidence of his right to vote.

Rev., s. 4331; 1901, c. 550, s. 7.

Section referred to in *Woodall v. Highway Com.*, 176-377.

5956. Registration of voters removing residence. Whenever any voter so registered shall remove from one precinct to another in the same county, or from one county to another in the state, he shall make application for registration, and upon production of his certificate of his being on the permanent roll, as provided in this chapter, under the hand and seal of either the clerk of the superior court or of the secretary of state, and proof of his identity, the proper officer charged with the registration of voters shall register his name and make record of the same as in cases of original registration under this chapter.

Rev., s. 4332; 1901, c. 550, s. 8.

5957. Educational qualification not applicable to permanent registrants. Any person holding a certificate of registration, as herein provided, shall be entitled to register in any county in this state, notwithstanding his inability to read and write: Provided, that he shall be otherwise qualified as an elector.

Rev., s. 4333; 1901, c. 550, s. 9.

The making of a permanent roll or record was intended to be done for sole purpose of furnishing convenient and easily available evidence of fact that those whose names appear therein are not required to have educational qualification: *Clark v. Statesville*, 139-490.

5958. Secretary of state furnishes necessary blanks. The secretary of state shall procure, provide, and furnish to the several officers named in this chapter and charged with duties under it, all such books, blanks, and other printed matter as may be necessary to carry into effect the provisions of this chapter.

Rev., s. 4334; 1901, c. 550, s. 10.

5959. Books constitute roll in secretary of state's office. The books containing the permanent roll of registered voters, sent to the office of the secretary of state by clerks of the courts of the several counties, shall be and constitute the permanent roll of registered voters, required by this chapter to be kept in the office of the secretary of state, and such books shall be deemed a full and complete compliance with the requirements of this chapter. It shall be the duty of the several clerks of the court, within thirty days after the close of each registration hereafter to be held, up to the first day of December, one thousand nine hundred and eight, to forward to the secretary of state the names of all persons registering under article six, section four, of the constitution of North Carolina, as required by this chapter, and it shall be the duty of the secretary of state to record such names in the permanent roll of registered voters for the several counties.

Rev., s. 4335; 1903, c. 178.

ART. 8. ABSENT ELECTORS

5960. Registration and voting by mail. In all primaries and elections of every kind hereafter held in this state any elector who may be absent from the county in which he is entitled to vote, or physically unable to attend for the purpose of voting in person, which fact shall be made to appear by the certificate of a physician or by affidavit, shall be allowed to register and vote as hereinafter provided.

1917, c. 23, s. 1; 1919, c. 322, s. 1.

5961. Registration of voters expecting to be absent during registration period. Any citizen of the state, not duly registered, who may be qualified to vote under the constitution and laws of this state, and who expects to be absent from the county in which he lives during the usual period provided for registration of voters, may be registered as herein provided. The secretary of state shall, on or before the seventh day of August, nineteen hundred and seventeen, furnish to the chairman of the county board of elections in each county a book for the registration of absent electors, which book shall contain separate columns for the name of elector, name of precinct in which elector resides, age, place of birth, race, and precinct in which elector last resided. It shall be the duty of the chairman of the board of elections in each county to register on said county registration book any qualified elector who presents himself for registration at any time other

than the usual registration period, and who expects to be absent from the voting precinct in which he resides during the usual registration period, if found to be otherwise entitled to registration, in the same manner as now provided by law for the registration of voters before the precinct registrar in the usual registration period. The chairman of the county board of elections shall, immediately after the appointment of a registrar or registrars for any election to be held in his county, either legalized primary or general election, either for the county or for any political subdivision thereof, certify to the respective registrars in each of such precincts the names, age, and residence, place of birth, etc., of any electors registered on the said county registration book and thereby entitled to vote in such precinct; and it shall be the duty of the registrar in every such precinct to enter upon the regular registration book for such precinct the names of all such electors so certified to him by the chairman of the county board of elections, marking opposite the names of such electors the words "Registered before chairman county board of elections"; and electors so registered shall be entitled to vote in any election in such precinct in the same manner as if registered by the precinct registrar.

1917, c. 23, s. 2.

5962. Blank certificates and envelopes for absent electors. The state board of elections shall furnish to the county board of elections in each county, at the same time that tickets are furnished for any general or primary elections, certificates in blank, and return envelopes, to be used by absent electors. The said certificates to be in the form as follows:

.....P. O.;date.
To the Registrar and Judges of Election.....Precinct:
I,, do hereby certify that I am a duly qualified elector in
.....precinct, county, North Carolina, and I inclose
herewith ballot or ballots which I wish to vote in the election to be held.....19...
(Signed)

Witness:

The return envelopes to be printed in form as follows:

Upper left-hand corner, "Name, Postoffice
Not to be opened till three p. m. on day of election.
Address, Registrar, Precinct, P. O.,
..... County, North Carolina."

The state board of elections shall also furnish to the county board of elections at the same time certificates in form as follows:

.....State;date
To the registrars and judges of election of.....Precinct:
I hereby cast my vote for each nominee of the.....party to be voted for at
the election to be held on (give date of election.)
.....
Witness:.....

Said certificate shall be signed by the elector, and when signed and witnessed shall be counted as a vote for each of said nominees, subject to the right of challenge.

1917, c. 23, s. 3; 1919, c. 322, s. 2.

5963. Ballots to be mailed to absent voters. It shall be the duty of the chairman of the county board of elections to mail or send to any voter absent from

the county, or who is physically unable to attend in person, on application for same, by such voter or any person for him, as soon as received from the state board of elections, one of each form of ballot applied for to be voted in such election, one blank certificate of the kind applied for and one return envelope.

1917, c. 23, s. 4; 1919, c. 322, s. 3.

5964. Opening votes of absent voters. It shall be the duty of the registrar in each precinct to open at three p. m. on the day of election all such letters received from such voters, and count the certificates provided for in the second preceding section.

1917, c. 23, s. 5; 1919, c. 322, s. 4.

5965. Challenges. The right to vote of any such absent voter shall be subject to challenge in the same manner as if the elector proposing to vote were present in person, and if found entitled to vote under the provisions of this article and the laws of the state, every such vote so received shall be deposited and counted in the same manner as if the voter had been present and cast his vote in person.

1917, c. 23, s. 5.

5966. Absent voter may sign name on ballot; ballots and certificates to be kept. In voting by the method prescribed in this article the voter may, at his election, sign, or cause to be signed, his name upon the margin or back of his ballot or ballots, for the purpose of identification. The ballot or ballots so voted, together with the accompanying certificates, shall be returned in a sealed envelope by the registrar and pollholders, with their certificates of the results of the election, and kept for six months, or, in case of contest in the courts, until the results are finally determined.

1919, c. 322, s. 4 (a).

5967. Fees allowed in connection with absentee's voting. The following fees shall be allowed as compensation for services under this article: The chairman of the county board of elections, for registering voters on the county registration book, and certifying same to precinct registrars, twenty cents. The precinct registrars, for entering same on precinct registration book, the same fees allowed by law for registration of voters. The chairman of the county board of elections, for mailing form of certificate, ballots, and return envelope, including postage, five cents. The fees, including postage, shall be paid as provided in regard to the expenses of the election or primary.

1917, c. 23, s. 6.

5968. Construction in favor of absentee's right. All the provisions of this article, and all of the other election laws of this state, shall be liberally construed in favor of the right of the elector to vote.

1917, c. 23, s. 7; 1919, c. 322, s. 5.

ART. 9. JUDGES OF ELECTION

5969. Appointment. The county board of elections for each county, on or before the first Monday in September, in the year of our Lord one thousand nine

hundred and six, and biennially thereafter, or at such other times as it shall be necessary to do so, shall appoint two persons who shall act as judges of election at each place of holding elections in their respective districts, each of whom shall be men of good moral character and able to read and write. The chairman of each political party in each county shall have the right to recommend three electors, residing in the precinct, who shall be men of good moral character, and able to read and write, for judges of election in such precinct: Provided, that no person holding any office or place of trust or profit under the government of the United States or the state of North Carolina, except justices of the peace, shall be eligible to appointment. And the county board of elections shall appoint one judge of election out of each list so recommended: Provided, said lists shall be filed by such chairman by twelve o'clock m. on said first Monday in September.

Rev., s. 4336; 1901, c. 89, s. 20.

Remedy, where election board fails to appoint those recommended by chairman of political party as judges, is by mandamus: *Harkins v. Cathey*, 119-649.

Person who can write his name, but who cannot read and write generally, is not qualified: *Mullen v. Morrow*, 123-773.

5970. Names published; vacancies filled; qualify before acting. The county board of elections shall, immediately after the appointment of judges of election as herein provided, publish the names of such judges so appointed, at the courthouse door of said county; and if any person appointed judge of election shall decline to serve, and so notify the chairman of the county board of elections, said chairman shall have the right to appoint another qualified elector of such precinct, who shall be of the same political party, if possible, to serve as judge of election in his stead, and his name shall be published at the courthouse door, and notice of his appointment served upon him as above provided. If any person appointed judge of election shall fail to attend at the polls at the hour of opening the same, the registrar of the township, ward, or precinct shall appoint some suitable elector of the same political party as the judge failing to appear, if practicable, to act in his stead, who shall be by him sworn before acting; and if the registrar shall fail to appear, then the judges of election may appoint another to act as registrar, who shall be sworn before acting.

Rev., s. 4337; 1901, c. 89, s. 20.

5971. Duties of judges. The judges of election shall attend at the polling places for which they are severally appointed on the day of election, and they, together with the registrar for such township, ward, or precinct, who shall attend with the registration books, after being sworn by some justice of the peace or other person authorized to administer oaths, to conduct the election fairly and impartially, according to the constitution and laws of the state, shall open the polls and superintend the same until the close of the election. They shall keep poll books, in which shall be entered the name of every person who shall vote, and at the close of the election the said registrar and judges of election shall certify the same over their proper signatures, or a majority of them, and deposit one copy thereof with the register of deeds and another with the chairman of the county board of elections for safe-keeping. And said poll books shall, in any trial for illegal or fraudulent voting, be evidence.

Rev., s. 4338; 1901, c. 89, s. 20.

ART. 10. CHALLENGES

5972. Registrar to attend polling place for challenges. It shall be the duty of the registrar to attend the polling place of his township or precinct with the registration books on Saturday preceding the election, from the hour of nine o'clock a. m. till the hour of three o'clock p. m., when and where the said books shall be open for the inspection of the electors of the precinct or township, and any of said electors shall be allowed to object to the name of any person appearing on said books. In case of any such objection, the registrar shall enter upon his books, opposite the name of the person so objected to, the word "Challenged," and shall appoint a time and place, before the election day, when he, together with said judges, shall hear and decide said objection, giving personal notice of such challenge to the voter so objected to; and if for any cause personal notice cannot be given, then it shall be sufficient notice to leave a copy thereof at his residence: Provided, nothing in this section shall prohibit any elector from challenging or objecting to the name of any person registered or offering to register at any time other than that above specified. If any person so challenged or objected to shall be found not duly qualified, the registrar shall erase his name from the books.

Rev., s. 4339; 1901, c. 89, s. 19.

A failure to keep registration books open on Saturday before election, during whole of prescribed time, does not vitiate election when no one was denied right of examination of books: DeBerry v. Nicholson, 102-465. See, also, Younts v. Comrs., 151-582; Hill v. Skinner, 169-405.

5973. How challenges heard. When any person is challenged, the judges and registrar shall explain to him the qualifications of an elector, and shall examine him as to his qualifications; and if the person insists that he is qualified and shall prove his identity with the person in whose name he offers to vote, and his continued residence in the precinct since his name was placed upon the registration list, as the case may be, by the testimony, under oath, of at least one elector, one of the judges or the registrar shall tender to him the following oath or affirmation:

You do solemnly swear (or affirm) that you are a citizen of the United States; that you are twenty-one years old, and that you have resided in this state for two years, and in this county for six months next preceding this election, and that you are not disqualified from voting by the constitution and laws of this state; that your name is (here insert name given), and that in such name you were duly registered as a voter of this township; and that you are the identical person you represent yourself to be, and that you have not voted in this election at this or any other polling place. So help you, God.

And if he refuses to take such oath, when tendered, his vote shall be rejected; if, however, he does take the oath when tendered, his vote shall be received: Provided, that after such oath or affirmation shall have been taken, the registrar and judges may, nevertheless, refuse to permit such person to vote, unless they be satisfied that he is a legal voter; and they are hereby authorized to administer the necessary oaths or affirmations to all witnesses brought before them to testify to the qualification of a person offering to vote. Whenever any person's vote shall be received, after having taken the oath or affirmation prescribed in this section, the registrar or one of the judges shall write on the poll books, at the end of such person's name, the word "Sworn." The same powers as to the administration of oaths and affirmations and the examination of witnesses, as

in this section granted to registrars and judges of election, may be exercised by the registrars in all cases where the names of persons registered or offering to register are objected to.

Rev., s. 4340; 1901, c. 89, s. 22.

5974. Challenge as felon; answer not used on prosecution. If any person is challenged as being convicted of any crime which excludes him from the right of suffrage, he shall be required to answer any question in relation to such alleged conviction; but his answer to such questions shall not be used against him in any criminal prosecution.

Rev., s. 3388; 1901, c. 89, s. 71.

ART. 11. CONDUCT OF ELECTIONS

5975. Special elections. Every election held in pursuance of a writ from the governor shall be conducted in like manner as the regular biennial elections, so far as the particular case can be governed by general rules, and shall, to all intents and purposes, be as legal and valid, and subject the officers holding and the persons elected to the same penalties and liabilities as if the same had been held at the time and according to the rules and regulations prescribed for the regular biennial elections.

Rev., s. 4341; 1901, c. 89, s. 75.

5976. Opening and holding of polls. The polls shall be open on the day of election from sunrise until sunset on the same day, and no longer, and each elector whose name shall appear registered shall be entitled to vote, unless he is successfully challenged for good cause on the day of election. A space of not more than fifty feet in every direction from the polls or rooms in which the election is held may be kept open and clear of all persons except the judges, registrar, and election bailiffs herein provided for, which space may be roped off with a narrow passage leading to and from the polls, and each elector shall approach the polls from one direction through such passage, and after his ballot is deposited in the ballot box, with as little delay as possible he shall depart by the passage leading from the polls. Only one elector shall enter the said passage at a time, and after the elector has entered, no one except the registrar or judges of election shall be permitted to speak to him or make any signs to him, nor shall he be permitted to speak or to make any signs to any one except the registrar or judges of election until his ballot has been deposited in the box and he has passed out of the enclosure. The said roped space shall, at all times during the hours for balloting, be kept open and clear of all persons except the election officers as aforesaid, and it shall be the duty of the election bailiffs to keep such space so cleared and open: Provided, that nothing herein contained shall make it compulsory for the judges and registrar to rope off said space: Provided further, that when any person is challenged, one challenger for each political party shall be entitled to enter the space roped off during the hearing of such challenge, but they shall retire therefrom upon the challenge being decided.

Rev., s. 4342; 1901, c. 89, s. 23.

That one of officers appointed to conduct election was absent a short time from polls, during which time no vote was cast and ballot boxes were not tampered with, nor was any opportunity afforded for tampering with them, does not vitiate election: *DeBerry v. Nicholson*, 102-456.

In the absence of fraud it is not material to validity of election that the persons appointed judges to hold it electioneered, or were absent from their posts at different times during the day: *Wilson v. Peterson*, 69-113.

Disqualifications of persons who hold an election for state and county officers will not affect validity of election. Such persons are *de facto* officers, whose acts are valid as to third persons, and cannot be collaterally impeached: *Wilson v. Peterson*, 69-113; *DeBerry v. Nicholson*, 102-465.

As to effect of irregularities in holding elections, see annotations under section 5940.

5977. Power of election officers to maintain order. The registrar and judges of election in each ward or precinct, the board of county canvassers of each county, and the board of state canvassers shall respectively possess full power and authority to maintain order, and to enforce obedience to their lawful commands during their sessions, respectively, and shall be constituted inferior courts for that purpose, and if any person shall refuse to obey the lawful commands of any such registrar or judges of election, or board of county canvassers, or board of state canvassers, or by disorderly conduct in their hearing or presence shall interrupt or disturb their proceedings, they may, by an order in writing, signed by their chairman, and attested by their clerk, commit the person so offending to the common jail of the county for a period not exceeding thirty days, and such order shall be executed by any sheriff or constable to whom the same shall be delivered, or if a sheriff or constable shall not be present, or shall refuse to act, by any other person who shall be deputed by such township or precinct board of elections, or board of county canvassers in writing, and the keeper of such jail shall receive the person so committed and safely keep him for such time as shall be mentioned in the commitment.

Rev., s. 4376; 1901, c. 89, s. 72.

5978. Appointment of bailiffs to maintain order at precincts. The registrar and judges of election may appoint one or more bailiffs for each precinct or ward to be present during the election to keep peace and protect the voting place, and to prevent improper intrusion upon the voting place, or interfering with the election, and to arrest all persons creating any disturbance about the voting place, and to enable all persons who have not voted, and who desire to vote, to have unobstructed access to the polls for the purpose of voting when others are not voting, and to keep clear the open space hereinbefore provided at all times during the election. It shall be the duty of the election bailiffs to be present at the voting place, and to take such steps as will accomplish the object of their appointment, and they shall have full power to do so; and they may summon to their aid all persons present at the voting place, and may arrest offenders against this section, who shall have the privilege of giving bail. And for the purposes of carrying out the powers herein conferred upon them, the registrar and judges of election shall be and are hereby constituted conservators of the peace. Every person offending against this section shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned at the discretion of the court.

Rev., s. 4381; 1901, c. 89, s. 26.

5979. Voter may deposit his own ballot. The ballot may be deposited for the voter by the registrar, or one of the judges of election, or the voter may deposit it if he chooses.

Rev., s. 4343; 1901, c. 89, s. 24.

5980. Size of ballots. The ballots shall be on white paper and may be printed or written, or partly written and partly printed, and shall be without device. The state board of elections may, on or before the first Monday of September, one thousand nine hundred and six, and biennially thereafter, prescribe the size of ballots for state, judicial, and congressional officers, and the county board of elections may, on or before the first Monday of September, one thousand nine hundred and six, and biennially thereafter, prescribe the size of the ballot for county, legislative, and township offices.

Rev., s. 4344; 1901, c. 89, s. 28.

The statute prohibiting devices upon ballots embraces elections for town and city officers: *Baxter v. Ellis*, 111-124. "O. K." on the back of a ballot is a device: *Ibid.* That the ballots are not of the required size is not sufficient to reject them unless the difference is so pronounced as to amount to a device: *Wright v. Spires*, 152-4. A ballot which has a name torn off should not for that cause be rejected: *Bray v. Baxter*, 171-6.

5981. Contents of ticket. The state officers, viz., governor, lieutenant-governor, secretary of state, auditor, treasurer, superintendent of public instruction, attorney-general, and other state officers not herein mentioned, the justices of the supreme court and the judges of the superior court and United States senators, shall be voted for on one ballot; members of congress on one ballot; presidential electors on one ballot; solicitors, members of the general assembly, clerk of the superior court, treasurer, register of deeds, surveyor, coroner, sheriff, county commissioners, tax collector, and every other officer elected by the voters of the county, shall be voted for on one ballot. All officers elected by the voters of a township shall be voted for on one ballot.

Rev., s. 4345; 1901, c. 89, s. 28; 1915, c. 121, s. 1.

5982. Ballot boxes; description; how provided. The county board of elections or, upon their failure, the registrar and judges of election, shall provide in each election precinct in their respective counties ballot boxes for each class of officers to be voted for in which to deposit the ballots for such officers, respectively. Each of said boxes shall have an opening through the lid of sufficient size to admit a single ballot, and no more. Each box shall be labeled in plain roman letters, designating whether congressional, state, county, or township box. The ballot boxes so furnished by the said county board of elections may be kept by the registrars after the election is over, if so ordered by said county board; otherwise they shall be returned to said board. The said registrar and judges of election, before the voting begins, shall carefully examine the ballot boxes and see that there is nothing in them, and thereupon they shall close and securely fasten the same, and no ballot box shall be opened until the time for voting is at an end.

Rev., s. 4346; 1901, c. 89, s. 29.

5983. How votes counted. When the election shall be finished, the registrar and judges of election, in the presence of such of the electors as may choose to attend, shall open the boxes and count the ballots, reading aloud the names of the persons who shall appear upon each ticket; and if there shall be two or more tickets rolled up together, or any ticket shall contain the names of more persons than such elector has a right to vote for, or shall have a device upon it, in either of these cases such tickets shall not be numbered in taking the ballots, but shall be void;

and the said counting of votes shall be continued without adjournment until completed and the result thereof declared. Any ballot found in the wrong box shall not be counted, unless the registrar and judges of election shall be satisfied that the same was placed there by mistake.

Rev., s. 4347; 1901, c. 89, s. 30.

While it is irregular to permit other persons than officers of election to count ballots, yet, unless it appears affirmatively that count was not correct, that fact will not be allowed to vitiate election, especially when judges accepted and certified result thus ascertained as true: *Roberts v. Calvert*, 98-580.

Where ticket was handed to judges of election rolled up and secured by an elastic band, and judges distributed votes among boxes, such votes were properly received and counted: *DeBerry v. Nicholson*, 102-465.

If there be two candidates for different offices having the same name, and a ticket be found in ballot box having that name and no other on it, it may be proved by extrinsic evidence for which of the candidates it was given: *Wilson v. Peterson*, 69-113.

Voter cannot vote two tickets of same kind, but with different names scratched, all left unscratched making a full ticket: *Wilson v. Peterson*, 69-113.

Where the ballot has more names on it than is allowed by law, but only one name for the office in question, it should be counted: *Bray v. Baxter*, 171-6. See, also, *Mitchell v. Alley*, 126-84.

The fact that a name is torn off does not exclude the ballot: *Bray v. Baxter*, 171-6—nor would the fact that the ballot is not of the prescribed size, unless the difference is so great as to amount to a device, *Wright v. Spires*, 152-4.

ART. 12. COUNTY BOARD OF CANVASSERS

5984. Appointment of members of board. The registrar and judges of election in each township, ward, or precinct shall appoint one of their number to attend the meeting of the board of county canvassers as a member thereof, and they shall deliver to the member who shall have been so appointed the original return or statement of the result of the election in such township, ward, or precinct, and the members of the several township, ward, or precinct boards of election, who shall have been so appointed, shall constitute the board of county canvassers for such county, and a majority shall constitute a quorum.

Rev., s. 4348; 1901, c. 89, s. 31.

This contemplates only one original return: *Jones v. Flynt*, 159-87.

5985. Meetings of board; election of chairman; oath of chairman and members. The board of county canvassers shall meet on the second day next after every election, at eleven o'clock a. m. of that day, at the courthouse of the county, and at that hour, without delay, the members of such board who shall then be present shall choose one of their number who shall be chairman, and shall choose one of their members as clerk of said board: Provided, the board of county canvassers of Hyde shall meet on the seventh day after the election. As soon as such chairman shall be appointed he shall administer to each of the other members, and each of the other members shall take an oath or affirmation in the following form: "You do swear (or affirm) that you will faithfully and impartially execute the duties of the board of canvassers according to law." And thereupon one of the members of such board, appointed for that purpose, shall administer to such chairman, and such chairman shall take an oath or affirmation in the same form as that taken by the other members of the board. And before proceeding to canvass and estimate the votes in such county, the chairman of the board shall administer to the clerk thereof an oath or affirmation in the following form:

“You do swear (or affirm) that you will faithfully execute the duties of clerk of this board according to law.”

Rev., s. 4349; 1901, c. 89, s. 32; 1905, c. 222; P. L. 1911, c. 422.

5986. To canvass returns and determine result. The board of county canvassers at their said meeting, in the presence of such electors as choose to attend, shall open and canvass and judicially determine the returns, stating the number of legal ballots cast in each precinct for each officer, the name of each person voted for, and the number of votes given to each person for each different office, and shall sign the same. The said board shall have power and authority to judicially pass upon all facts relative to the election, and judicially determine and declare the result of the same. And they shall also have power and authority to send for papers and persons and examine the same.

Rev., s. 4350; 1901, c. 89, s. 33.

See quo warranto, in chapter Civil Procedure, for contested election cases.

Courts will not interfere by injunction to prevent canvassing board from ascertaining and promulgating result: *Bynum v. Comrs.*, 101-412. Their duties being judicial and involving discretion, the court cannot control their action by mandamus: *Britt v. Board of Canvassers*, 172-797.

The return of the board of canvassers is prima facie correct: *Jones v. Flynt*, 159-87. But their judgments or decisions are not so conclusive as to exclude collateral attack in a civil action in the nature of quo warranto; and the word “judicially” in this section does not enlarge the meaning: *Barnett v. Midgett*, 151-1.

POWERS OF CANVASSING BOARDS UNDER FORMER STATUTES. Inspectors of elections are, under the act of assembly, the exclusive judges of the qualification of voters, and, no corruption being charged or found against them, are not responsible for mere error in judgment: *Peavey v. Robbins*, 48-339.

A board of county canvassers, in canvassing the votes cast in an election, have no right to go behind the returns sent up by the judges of election from the respective townships of the county: *Moore v. Jones*, 76-182.

The quasi-judicial functions of county canvassers do not extend beyond an inquiry into and a determination of the regularity and sufficiency of returns themselves: *Peebles v. Comrs.*, 82-385.

County canvassers must decide upon authenticity and regularity of returns; but, when received, returns must be counted as importing absolute verity, as far as the county canvassers are concerned: *Ibid.*

The power conferred upon boards of county canvassers of elections, by the Code of 1883, section 2694, is confined to an examination and determination of regularity and authenticity of returns, and does not extend to inquiries into any facts which it may be claimed made the election invalid, as fraud, intimidation, etc.: *Gatling v. Boone*, 98-573.

CANVASSING THE RETURNS UNDER FORMER STATUTES. The return of the pollholders to the ones designated by law to canvass the vote of the county is prima facie evidence of the correctness of the count: *Quinn v. Lattimore*, 120-426; *Roberts v. Calvert*, 98-580; *Gatling v. Boone*, 101-61; *Peebles v. Comrs.*, 82-385; *Moore v. Jones*, 76-182—if for any reason such returns cannot be used, any other competent evidence is admissible to show the result of the election, *Gatling v. Boone*, 101-61—and the declaration by the canvassers of the result establishes a prima facie right in favor of persons thereby ascertained to be elected, and is conclusive only of right to be inducted into office, *Gatling v. Boone*, 98-573; *Bynum v. Comrs.*, 101-414, and cases there cited; *Quinn v. Lattimore*, 120-426; *Wallace v. Salisbury*, 147-58—but such declaration of result does not exclude jurisdiction of proper courts to examine and determine, upon a direct proceeding, correctness and sufficiency of returns and true results of election, *Gatling v. Boone*, 98-573; *McDowell v. Construction Co.*, 96-514—though such declaration of result, and the certificate of election issued, cannot be attacked collaterally, *McDowell v. Construction Co.*, 96-514; *Bynum v. Comrs.*, 101-412, and cases cited on page 414.

The result of vote is conclusively settled, so far as board of county commissioners are concerned, by certificate of board of canvassers: *Hannon v. Grizzard*, 96-293.

Where, at close of an election in a township, judges counted ballots and officially declared result, correctness of such count and declaration is not rebutted by introduction in evidence of a tally sheet showing different results, which was kept overnight and during day following election in a public office, where any one could have access to it and which bears signs of having been tampered with: *Quinn v. Lattimore*, 120-426.

To invalidate an election upon ground of intimidation, burden is upon assailant to show that voters were kept from voting or compelled to vote otherwise than they would. Mere noise, confusion or threats will not suffice: *Roberts v. Calvert*, 98-580.

Result of an election will not be disturbed because of illegal votes received or legal votes refused, unless number be such that correctness would show a majority for the contesting party: *Deloatch v. Rogers*, 86-358. County board of canvassers erred in rejecting vote of township because there had been no new registration as ordered, when order was given too late: *Swain v. McRae*, 80-111. Where there has been no registration at all, the votes cast cannot be counted by proving that none but duly qualified electors voted; possibly this principle might be relaxed where a fraudulent conspiracy to deprive voters of right of suffrage is shown; and it does not apply where legislature has failed to provide means for registration: *Harris v. Scarborough*, 110-232.

Where the board of county canvassers illegally declared one elected to a county office, and upon his failure to qualify the county commissioners declared the office vacant and appointed a third person to fill the vacancy, this would not affect the right of the person duly elected to have his election determined by the court: *Roberts v. Calvert*, 98-580.

5987. What returns placed on same abstract. The abstract of votes for each of the following classes of officers shall be made on a different sheet:

1. Governor and all state officers; justices of the supreme court; judges of the superior court; and United States senators.
2. Senators and representatives of the general assembly.
3. Solicitor.
4. County officers.
5. Township officers.
6. Representative in the congress.

Rev., s. 4351; 1901, c. 89, s. 34; 1915, c. 121, s. 1.

5988. Duplicate abstract of votes for higher offices; preparation and disposition. Two abstracts of all votes cast for state officers, representative in congress, for justices of the supreme court, for judges of the superior court, for solicitor, and for United States senators, shall be made and signed by the chairman of the board of county canvassers, one of which shall be delivered to the chairman of the county board of elections, one filed with the register of deeds, to be registered in his office; also two separate abstracts of all votes cast for state senators, when the senatorial districts consist of more than one county, one of which shall be filed with the register of deeds to be registered in his office, and the other furnished to the county board of elections or other returning officer.

Rev., s. 4352; 1901, c. 89, s. 35; 1915, c. 121, s. 1.

5989. Duplicate abstracts of county and township officers; preparation and disposition. Two abstracts of the votes cast for county and township officers and for members of the general assembly shall be made and signed by the chairman of the board of county canvassers, one of which shall be delivered to the chairman of the county board of elections, and one filed with the register of deeds to be registered in his office. The register of deeds shall, within five days after such

returns are filed in his office, certify under his official seal to the secretary of state, upon blanks furnished by him for that purpose, a list of the persons voted for as members of the senate and house of representatives and all county officers, together with the votes cast for each, and their postoffice addresses.

Rev., s. 4353; 1901, c. 89, s. 36; 1909, c. 894, s. 2.

5990. Filing of original returns; duplicate abstracts of vote for higher offices. When the canvass is concluded the board shall deliver the original returns to the clerk of the superior court to be filed in his office. The register of deeds shall also deliver by mail to the secretary of state and to the chairman of the state board of elections, each, one duplicate of the abstract of the votes cast for governor and all state officers, for justices of the supreme court, judges of the superior court and solicitor, and representative in congress, and for United States senators.

Rev., s. 4354; 1901, c. 89, s. 37; 1915, c. 121, s. 1.

5991. Who declared elected. The person having the greatest number of legal votes for any office is to be declared elected. But if two or more county candidates, having the greatest number of votes, shall have an equal number, the county board of elections shall determine which shall be elected.

Rev., s. 4355; 1901, c. 89, s. 38.

In case of a tie the county board of elections determines, not who has been elected, but who shall be elected: *Bray v. Baxter*, 171-6. The fact that the person receiving the highest number of votes is disqualified does not entitle the one receiving the next highest vote to be declared elected: *State ex rel. Spruill v. Bateman*, 162-588.

5992. Proclamation of result of election. When the board of county canvassers shall have thus completed the comparison of the polls, they shall judicially determine the result of the election in their county for all persons voted for, and proclaim the same at the courthouse door, with the number of votes cast for each.

Rev., s. 4356; 1901, c. 89, s. 39.

The result determined by the board of canvassers makes out a prima facie case for the person declared elected: *Jones v. Flynt*, 159-87. The presumption in favor of correctness of the result is conclusive until reversed by the judgment of court in a proceeding for that purpose: *Wallace v. Salisbury*, 147-58. See, also, cases cited under section 5986.

ART. 13. STATE BOARD OF CANVASSERS

5993. Who constitutes board. The governor and four members of the state board of elections, to be named and selected by said board, shall constitute the board of state canvassers, but no member thereof shall take part in canvassing the votes for any office for which he himself is a candidate.

Rev., s. 4357; 1901, c. 89, s. 63.

5994. Duty of board. The board of state canvassers shall open the abstracts transmitted to the secretary of state on the Thursday following the third Monday after each election held under the provisions of this chapter, and examine the returns, if they shall have been received from all of the counties, and, if not all received, they may adjourn not exceeding twenty days for the purpose of obtaining the returns from all of the counties, and when these are received, shall

proceed with the canvass, which canvass shall be conducted publicly in the hall of the house of representatives. They shall make an abstract, stating the number of legal ballots cast for each candidate, the names of all persons voted for, for what office they respectively received the votes, and the number of votes each received, and stating whom they ascertain and judicially determine by the count to be elected to the office, which abstract shall be signed by the board of canvassers in their official capacity as state canvassers, and have the seal of the state affixed thereto: Provided, that in all cases of special elections ordered by the governor to fill vacancies in the representation of the state in the congress, the board of state canvassers may meet as soon as the secretary of state may notify the members of the board that the returns from all the counties entitled to vote in said special elections have been received by him; and it shall be the duty of the secretary of state to fix the days of meeting, which shall not be later than ten days after such elections, and it shall be the duty of all returning officers to make their returns promptly, so that the same may be received within the ten days.

Rev., s. 4358; 1901, c. 89, s. 65.

5995. Duty of board if abstracts not received. If the abstracts or returns from any county shall not be received at the office of the secretary of state, or by the board of state canvassers, or by the state board of elections, by the third Monday after the day of election, the secretary of state or the board of state canvassers is authorized to obtain from the register of deeds or the county board of elections, at the expense of such county, the original abstracts or returns, or, if they have been forwarded, copies of them.

Rev., s. 4359; 1901, c. 89, s. 64; 1917, c. 176, s. 1.

5996. To estimate votes cast for executive officers. The board of state canvassers shall estimate the votes cast for officers of the executive department from the abstracts forwarded to the secretary of state, and shall publish a statement of the result of such calculation, but this statement shall be for information of the public only, and shall not have the effect to determine what candidates have been elected to such offices. Their election shall be ascertained and declared according to section three, article three, of the constitution.

Rev., s. 4360; 1901, c. 89, s. 68.

5997. To declare result; certificate of election issued. After the state board of canvassers shall have ascertained and declared the result of the elections as hereinbefore provided, they shall cause the result to be certified to the secretary of state, who shall prepare a certificate for each person elected, and shall sign the same, which certificate he shall deliver to the person elected, when he shall demand the same.

Rev., s. 4361; 1901, c. 89, s. 67.

5998. Secretary of state to record abstracts. The secretary of state shall record the abstract or abstracts in a book to be kept by him for recording the result of elections and to be called The Election Book, and shall also file the abstract or abstracts.

Rev., s. 4362; 1901, c. 89, s. 66.

ART. 14. STATE OFFICERS, SENATORS, AND CONGRESSMEN

5999. How returns published and result declared; how tie broken. The speaker of the house of representatives, in the presence of a majority of the members of both houses of the general assembly, shall open and publish the returns for governor, lieutenant-governor, secretary of state, auditor, treasurer, superintendent of public instruction and attorney-general, or other state officers, and United States senators, at twelve o'clock noon, on the first Tuesday after the organization of both houses of the general assembly. And if for any cause there be no returns from any county of the state, or if any return be defective, a proper return shall be had in such manner as the two houses in joint session may direct; and in either case the publication of the result may be postponed to such time as the joint session of the two houses may deem best. The person having the highest number of votes for each office, respectively, shall be declared duly elected thereto; but if two or more be equal and highest in votes for the same office, then one of them shall be chosen by joint ballot of both houses of the general assembly. Contested elections shall be determined by a joint vote of both houses of the general assembly in the same manner and under the same rules and regulations as prescribed in cases of contested election of members of the general assembly.

Rev., s. 4363; 1901, c. 89, s. 44; 1915, c. 121, s. 1.

6000. How abstract of votes made. An abstract of the returns for state officers and United States senators shall be made by the clerks of the two houses of the general assembly, showing the number of ballots cast for each candidate, the names of all persons voted for, the offices for which they received such votes, and the number of votes cast for each person, and the persons ascertained by the canvass to be elected to the several offices, and said abstract shall be signed by the presiding officers of the two houses and delivered to the secretary of state, who shall record it in the election book kept in his office, and then file it. Said abstract shall also be printed in the journals of the two houses and in the legislative documents.

Rev., s. 4364; 1901, c. 89, s. 45; 1915, c. 121, s. 1.

6001. Regular elections for senators. United States senators to fill vacancies caused by the expirations of regular terms shall be elected by the people at the last regular election before each vacancy shall occur as now provided for state officers, and the tickets shall be furnished, blanks sent out and returns made as for state officers, and the returns canvassed and results declared in the same way.

1913, c. 114, s. 3.

6002. Election of senator to fill unexpired term. If such vacancy shall occur more than thirty days before any general state election, the governor shall issue his writ for the election by the people, at the next general election, of a senator to fill the unexpired part of the term, and said election shall take effect from the date of the canvassing of the returns, which shall take place at the same time and in the same way as the canvassing of the returns for state officers.

1913, c. 114, s. 2.

6003. Governor to fill vacancies until general election. Whenever there shall be a vacancy in the office of United States senator from this state caused by death, resignation, or otherwise than by expiration of a term, the governor shall appoint to fill the vacancy till there shall be an election.

1913, c. 114, s. 1.

6004. Congressional districts specified. For the purpose of selecting representatives to the congress of the United States, the state of North Carolina shall be divided into ten districts, as follows:

First District—Beaufort, Camden, Chowan, Currituck, Dare, Gates, Hertford, Hyde, Martin, Pasquotank, Perquimans, Pitt, Tyrrell, and Washington.

Second District—Bertie, Edgecombe, Greene, Halifax, Lenoir, Northampton, Warren, and Wilson.

Third District—Carteret, Craven, Duplin, Jones, Onslow, Pamlico, Pender, Sampson, and Wayne.

Fourth District—Chatham, Franklin, Johnston, Nash, Vance, and Wake.

Fifth District—Alamance, Caswell, Durham, Forsyth, Granville, Guilford, Orange, Person, Rockingham, Stokes, and Surry.

Sixth District—Bladen, Brunswick, Columbus, Cumberland, Harnett, New Hanover, and Robeson.

Seventh District—Anson, Davidson, Davie, Hoke, Lee, Montgomery, Moore, Randolph, Richmond, Scotland, Union, Wilkes, and Yadkin.

Eighth District—Alexander, Alleghany, Ashe, Cabarrus, Caldwell, Iredell, Rowan, Stanly, and Watauga.

Ninth District—Avery, Burke, Cleveland, Gaston, Lincoln, Madison, Mecklenburg, Mitchell, Yancey, and Catawba.

Tenth District—Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, McDowell, Macon, Polk, Rutherford, Swain, and Transylvania.

Rev., s. 4366; 1911, c. 97.

6005. When election for congressmen held. The election for United States senators whose terms will expire before the next general election and for members of congress shall be held on the Tuesday next after the first Monday in November, one thousand nine hundred and six, and biennially thereafter, unless congress shall prescribe a different time for the holding of such elections, and shall be conducted by the officers provided for holding elections of members of the general assembly in this chapter and at the same place.

Rev., s. 4367; 1901, c. 89, s. 59.

Mandamus cannot be used to interfere with or control the discretionary power of the election officers, nor quo warranto to try title to the office of congressman; the remedy is by contest: Britt v. Board of Canvassers, 172-797; O'Hara v. Powell, 80-103.

6006. Election after reapportionment of congressmen. Whenever, by a new apportionment of representatives among the several states, the number of representatives in the congress of the United States from North Carolina shall be either increased or decreased, and neither the congress nor the general assembly shall provide for the election of the same, then if the said representatives shall be increased, the increased number shall be elected by the qualified voters of the whole state, and shall be voted for on one ballot, and the representatives from

the several congressional districts shall be elected by the voters of said districts, respectively, and shall each be voted for on another ballot; but if the number of said representatives shall be decreased as aforesaid, in that event all the representatives in congress shall be elected by the qualified voters of the whole state and shall be voted for on one ballot.

Rev., s. 4368; 1901, c. 89, s. 58.

6007. Special election for congressmen. If at any time after the expiration of any congress and before another election, or if at any time after an election, there shall be a vacancy in the representation in congress, the governor shall issue a writ of election, and by proclamation shall require the voters to meet in the different townships in their respective counties at such times as may be appointed therein, and at the places established by law, then and there to vote for a representative in congress to fill the vacancy; and the election shall be conducted in like manner as regular elections.

Rev., s. 4369; 1901, c. 89, s. 60.

6008. Certificate of election for congressmen. Every person duly elected a representative to congress, upon obtaining a certificate of his election from the secretary of state, shall procure from the governor a commission, certifying his appointment as a representative of the state, which the governor shall issue on such certificate being produced.

Rev., s. 4370; 1901, c. 89, s. 61.

ART. 15. ELECTION OF PRESIDENTIAL ELECTORS

6009. Conduct of election. The election of presidential electors shall be conducted and the returns made as nearly as may be directed in relation to the election of state officers, except as herein otherwise expressed.

Rev., s. 4371; 1901, c. 89, s. 79.

6010. Names of electors on one ballot. The names of the electors to be chosen shall be written or printed on each ballot, and each ballot shall contain the name of at least one inhabitant of each congressional district into which the state may be divided, and against the name of each person shall be designated the number of the congressional district to which he belongs.

Rev., s. 4372; 1901, c. 89, s. 78.

6011. How returns made. The county board of canvassers shall meet in the courthouse of their respective counties as hereinbefore provided, and shall ascertain and determine, by faithful addition, the number of legal votes for every person who shall have been voted for as an elector within the county, and shall certify the same under their hands substantially in the manner and form following, to wit:

We, the county canvassers for county, do hereby certify that an election was held on the day and at the places fixed by law within said county, for electors of president and vice-president of the United States, and that the number of

votes hereinafter specified opposite the names of the several persons following was given for such persons as electors for the state of North Carolina, of president and vice-president of the United States, namely: D. G. F. (here state the number of votes for D. G. F.), for J. M. L. (here state the number of votes for J. M. L., and so on, until the list of persons voted for and the number of votes shall be completed).

Given under our hands, this day of, in the year A. D.

Three fair copies of such certificate and return shall be made by the board of canvassers under their hands, and one of the same shall be immediately delivered to the chairman of the county board of elections of the county, whose duty it shall be to attend at the meeting of said canvassers, and who shall forthwith make proclamation and read the same through at the courthouse door; and the said chairman of the county board of elections shall immediately thereafter seal up said copy in an envelope, and transmit the same by mail in a registered letter or otherwise, to the secretary of state at the capitol in Raleigh, so that he shall receive the same within twelve days after the day of election; and one of said copies, together with the original precinct returns, shall be delivered to the clerk of the superior court, who shall record the said copy in The Election Book, and file the originals of said copy in his office. And one copy shall be delivered to the register of deeds, to be registered in his office. The clerk of the superior court shall immediately, after the same shall have been delivered to him, send a copy of the certificate of the board of county canvassers, sealed with the seal of his office, to the secretary of state at Raleigh, so that he may receive the same within twelve days after said election. And in case of failing to make such returns within the time herein prescribed, such chairman of the county board of elections, clerk, or other officer, whose duty it shall be so to do, shall forfeit and pay to the state the sum of five hundred dollars, to be recovered by the attorney-general, in the superior court for the county of Wake.

Rev., s. 4373; 1901, c. 89, s. 80.

6012. Declaration and proclamation of result. The secretary of state, upon the meeting of the board of state canvassers on the Thursday following the third Monday after each election, shall deliver said certificates to the board, whose duty it shall be to then attend, in the presence of such other persons as may choose to be present, in the hall of the house of representatives in the capitol, open the certificates and proceed to canvass the same, and ascertain and determine the result: Provided, that if the returns from any county shall not, by that time, have been received by the secretary of state from the chairman of the county board of elections, or clerk of the superior court, or register of deeds, then the board of state canvassers shall order and compel a duplicate return from the clerk of the superior court and the chairman of the county board of elections, or register of deeds, or both, in such manner as they may think best; and for that purpose they may adjourn from day to day, not to exceed twenty days. The board of state canvassers in canvassing said returns shall merely add up the returns, as certified by the county board of canvassers, but it shall be their duty to disregard any such apparent clerical error or any such technical informality as may not render it reasonably uncertain who was the person intended to be designated as voted for, and what was the number of votes actually received by any candidate. At the conclusion of the canvass, the board shall

make an abstract of all votes cast, and shall deliver the same to the secretary of state, together with the original returns from the several counties, to be filed in his office. The secretary of state shall copy the said abstracts in The Election Book directed in this chapter to be kept in his office, and shall, under his hand and seal of his office, certify to the governor the names of as many persons receiving the highest number of votes for electors of president and vice-president of the United States as the state may be entitled to in the electoral college. The governor shall thereupon immediately issue his proclamation and cause the same to be published in such daily newspapers as may be published in the city of Raleigh, wherein he shall set forth the names of the persons duly elected as electors, and warn each of them to attend at the capitol in the city of Raleigh at noon on the second Monday of January next after his election, at which time the said electors shall meet, and in case of the absence or ineligibility of any elector chosen, or if the proper number of electors shall for any cause be deficient, those present shall forthwith elect from the citizens of the state so many persons as will supply the deficiency, and the persons so chosen shall be electors to vote for the president and vice-president of the United States. And the governor shall, on or before the second Monday of January, make out three lists of the names of the said persons so elected and appointed electors, and cause the same to be delivered to them, as directed by the act of congress.

Rev., s. 4374; 1917, c. 176, s. 2; 1901, c. 89, s. 81.

6013. Penalty for presidential elector failing to attend and vote. Each elector, with his own consent previously signified, failing to attend and vote for a president and vice-president of the United States, at the time and place herein directed (except in case of sickness or other unavoidable accident), shall forfeit and pay to the state five hundred dollars, to be recovered by the attorney-general in the superior court of Wake county.

Rev., s. 4375; 1901, c. 89, s. 83.

ART. 16. MISCELLANEOUS PROVISIONS AS TO GENERAL ELECTIONS

6014. Agreements for rotation of candidates in senatorial districts of more than one county. When any senatorial district consists of two or more counties, in one or more of which the manner of nominating candidates for legislative offices is regulated by statute, and the privilege of selecting the candidate for senator, or any one of the candidates for senator, of any political party (as the words "political party" are defined in the first section of this subchapter) in the senatorial district, is, by agreement of the several executive committees representing that political party in the counties constituting the district, conceded to one county therein, such candidate may be selected in the same manner as the party's candidates for county offices in the county, whether in pursuance of statute or under the plan of organization of such party. All nominations of party candidates for the office of senator, made as hereinbefore provided, shall be duly certified, by the chairman and secretary of the executive committee of the party making the same, and for the county in which they are made, to the chairmen of the executive committees of such party in all other counties con-

stituting the senatorial district; and no other action shall be deemed necessary to constitute such candidate the nominee of his party for such office.

1911, c. 192.

6015. Judges and solicitors; commission; when term begins. Justices of the supreme court, judges of the superior court, and solicitors shall be commissioned by the governor, and their terms of office shall begin on the first day of January next succeeding their election. An election for officers, whose terms shall be about to expire, shall always be held at the general election next preceding the expiration of their terms of office.

Rev., s. 4377; 1901, c. 89, s. 69.

6016. Penalty for refusing copy of poll books. Any officer who shall refuse to permit any candidate, or person qualified to vote, at his own expense, to have a copy of the poll books, shall forfeit and pay two hundred dollars, one-half to the person who shall sue for the same and the other half to the use of the state. Such copy need not be given if the making interferes with the duty of the holder of the books.

Rev., s. 4382; 1901, c. 89, s. 83.

6017. Forms for returns sent to proper officers by secretary of state. The secretary of state shall cause proper forms of returns to be prepared and printed, and send copies thereof, with plain directions as to the manner of endorsing, directing, and transmitting the same to the seat of government, to all of the returning officers of the state, at least thirty days before the time for holding any election. He shall also furnish to the register of deeds of each county all such printed blanks as may be necessary for making the county returns.

Rev., s. 4383; 1901, c. 89, s. 43.

SUBCHAPTER II. PRIMARY ELECTIONS

ART. 17. PRIMARY ELECTIONS

6018. Date for holding primaries. On the first Saturday in June next preceding each general election to be held in November for state officers, representatives in congress, district officers in districts composed of more than one county, and members of the general assembly of North Carolina, or any such officers, there shall be held in the several election precincts within the territory for which such officers are to be elected a primary election for the purpose of nominating candidates of each and every political party in the state of North Carolina for such offices as hereinafter provided; and at such primary election next preceding the time for the election of a senator for this state in the congress of the United States there shall likewise be nominated the candidate of each political party in this state for such office of United States senator.

1915, c. 101, s. 1; 1917, c. 218.

Primary election law is constitutional: *State v. Cole*, 156-618. Provisions and purposes of the law examined: *Brown v. Costen*, 176-63.

6019. Candidates for president and vice-president selected. On the first Saturday in June of each year in which presidential electors are to be elected every person who may be entitled to register and vote in the general election to be held in the state of North Carolina for presidential electors may by party primary ballot express his choice for the nominees of his party respectively for president and for vice-president of the United States; and all delegates at large from the state of North Carolina to the national convention of such political party and the delegates from each congressional district shall be bound by the majority of the votes which may be cast for any such persons for the respective nominations, and, in the event that there is no majority vote, the plurality of such votes shall govern in each of the congressional districts and in the state at large, respectively, so expressed by the respective political party primaries in the state and in the respective congressional districts: Provided, that the state board of elections shall make such other and necessary rules and regulations for carrying out the provisions of this article as may be proper, such rules and regulations not to be in conflict with the letter and spirit of this article.

1915, c. 101, s. 2; 1917, c. 218.

6020. Primaries governed by general election laws. Unless otherwise provided in this article, such primary elections shall be conducted, as far as practicable, in all things and in all details in accordance with the general election laws of this state, and all the provisions of this chapter and of other laws governing elections not inconsistent with this article shall apply as fully to such primary elections and the acts and things done thereunder as to general elections; and that all acts made criminal if committed in connection with a general election shall likewise be criminal, with the same punishment, when committed in a primary election held hereunder.

1915, c. 101, s. 3; 1917, c. 218.

The general election laws apply when not inconsistent: *Brown v. Costen*, 176-63. A primary election is a public election, and an officer of such election may be indicted for failure to perform his duty, under section 4385: *State v. Cole*, 156-618.

6021. Appointment of election boards. On the tenth Saturday preceding each state or district primary election the state board of elections shall meet in the city of Raleigh and appoint the county boards of elections for the several counties; and on the seventh Saturday preceding the time for holding each primary election the county board of elections for each of the several counties shall meet at the courthouses of their respective counties and organize as provided by law; and shall appoint a registrar and judges of election for each election precinct as prescribed by law, and the registrars and judges so appointed shall likewise serve in the general election following their appointment, unless for good cause made to appear to the respective county boards of elections others shall be appointed by them: Provided, that such registrars and judges shall, before entering upon their duties, have the oath of office administered to them by some officer authorized to administer oaths.

1915, c. 101, s. 4; 1917, c. 218; 1919, c. 139.

6022. Notices and pledges to be filed by candidates. Every candidate for selection as the candidate of any political party for any office provided to be voted for

in any primary election other than candidates for nomination for the state senate in districts composed of only one county, for the house of representatives or for the county offices hereinafter referred to, shall file with the state board of elections, at least six weeks before such primary is to be held, a notice stating his party affiliation, the office for which he is a candidate, and a pledge to abide by the result of and to support the party candidate nominated in such primary by the political party with which he affiliates; and every candidate for selection as the candidate of any political party in the state of North Carolina for the state senate in a district composed of only one county, and for the house of representatives and the county offices hereinafter referred to, shall file with the appropriate county board of elections, at least two weeks before such primary election is to be held, a like notice and pledge.

1915, c. 101, s. 6; 1917, c. 218.

6023. Fees of candidates. Candidates for the following named offices shall at the time of filing notices of candidacy pay the following named sums to the state board of elections, to be paid into the state treasury: For any congressional office, except as hereinafter named, the sum of fifty dollars; for judge of the superior court, solicitor of any judicial district or any state officer, the sum of twenty dollars; and for state senator, the sum of five dollars. Candidates for any county office shall at the time of filing their notice of candidacy pay to the county board of elections of the county in which they reside, to be paid into the treasury of such county, the sum of five dollars; except candidates for surveyor, coroner, and county commissioners, who shall pay into the county treasury the sum of one dollar: Provided, constables and township officers shall not be required to pay any fee whatever.

1915, c. 101, s. 4; 1917, c. 218; 1919, c. 139.

6024. Fees erroneously paid refunded. Where a candidate erroneously files a notice of candidacy, accompanied by the proper sum of money, with the state board of elections, instead of with the local county board, and the money is paid into the state treasury; or where a candidate files a notice, accompanied by the sum fixed by law with the state board, the money being paid into the state treasury, and afterwards, but before the time for filing such notices, as fixed by law, shall have expired, he wishes to withdraw his candidacy, then, in both these cases, the money may be refunded to the candidate, upon certificate from the chairman of the state board of elections that the facts exist which entitle him to such refunding. Upon such certificate, the auditor shall give his warrant upon the treasurer of the state, and the treasurer shall pay the same.

1919, c. 50.

6025. Statements of expenditures to be filed by candidates. It shall be the duty of every person who shall be a candidate in any primary election for the nomination of any political party for a state or district office or for the state senate in a district composed of more than one county, to file under oath, ten days before such primary election, with the secretary of state, and of every candidate for nomination as a candidate for state senator in a district composed of only one county, and for the house of representatives, to so file with the clerk of the

superior court of the county in which he is such candidate, an itemized statement of all moneys spent by him and which he knows to have been spent by any one for him, as also to file under oath within twenty days after such primary, with the secretary of state or clerk of the superior court, as above provided, an itemized statement of all money or other things of value that he has spent and knows to have been spent by any one else in his behalf, and all money that has been contributed to him directly or indirectly by any person or corporation, and the names of the contributors; and further, that he has neither directly nor indirectly promised to give anything of value to any person for his support in such primary, and that he has not promised to support any person in return for support. And it shall be the duty of every candidate for selection as a candidate for a county office to file a like statement under oath with the clerk of the superior court of the appropriate county at the time hereinbefore prescribed for notice to be filed by the candidates for nomination for state and other offices; and failure to file any statement prescribed by this section shall constitute a misdemeanor: Provided, that with respect to the selection of a candidate for the state senate the provisions of section 6014 of this chapter shall apply, except that such candidate shall be selected in a primary as authorized herein in the county entitled to name the candidate for that election, and where such candidate is named by one county the same provision as to notice and statement of moneys spent shall apply as if there were only one county in the district.

1915, c. 101, s. 6½; 1917, c. 218.

6026. Payment of expenses for primary elections. The expense of printing and distributing the poll books, blanks, tickets for all state and district offices, and the per diem and expenses of the state board of elections while engaged in the discharge of the duties imposed herein, shall be paid by the state; and the expense of printing and distributing the tickets for all county offices, including tickets for candidates for representative in the general assembly, and the per diem and expenses of the county board of elections and the registrars and judges of election while engaged in the discharge of the duties herein imposed, shall be paid by the counties, as is now provided by law to be paid for performing the duties imposed in connection with other elections.

1915, c. 101, s. 7; 1917, c. 218.

6027. Registration of voters. The regular registration books shall be kept open before the primary election in the same manner and for the same time as is prescribed by law for general elections, and electors may be registered for both primary and general elections. At the first primary election held under the provisions of this article, new registration books shall be provided, in which on each page there shall be a column headed with the language, "With which political party are you affiliated?" and it shall be the duty of each registrar to transcribe the names of all formerly registered voters in his precinct into such book "or such compensation as the state board of elections shall indicate, to be paid by the county; and when such voter, whose name has been thus transcribed, appears for the first time to vote in a primary provided for by this article, he shall answer the question stated above, and it shall be the duty of the registrar and judges of election to write opposite the name of each voter in such primary

his answer to such question; and as to all other persons not already registered who shall register to vote in a party primary, it shall be the duty of the registrar, when such person registers, to propound to him the same question and to have the same answered, and write the answer of such elector on such book in such column.

No person shall be entitled to participate or vote in the primary election of any political party unless he be a legal voter, or shall become legally entitled to vote at the next general election, and has first declared and had recorded on the registration book that he affiliates with the political party in whose primary he proposes to vote and is in good faith a member thereof, meaning that he intends to affiliate with the political party in whose primary he proposes to vote and is in good faith a member thereof.

1915, c. 101, s. 5; 1917, c. 218.

Qualified voters in primary election: *Brown v. Costen*, 176-63.

6028. Notices filed by candidates to be certified; printing and distribution of ballots. When the time for filing notices by candidates for nomination shall have expired, the chairman of the state board of elections shall within three days thereafter certify the facts as to such notices as have been filed with it to the secretary of state; and at the same time he shall certify to the appropriate county boards of elections the facts as to such notices as have been filed with said state board of elections by candidates for nomination for the state senate in districts composed of two or more counties; and said chairman, acting under the direction of the state board of elections and under such rules and regulations as may be prescribed by it, shall, without delay, at the expense of the state, cause a sufficient number of official ballots to be printed for each political party having candidates to be voted for in the primary and distributed to the chairman of the county boards of elections in the several counties, upon which ballot shall appear the names of candidates who shall, under the provisions of this article, have filed notice of their candidacy and otherwise complied with the requirements of this article, except candidates for offices ballots for which are herein provided to be printed by the several county boards of elections, so that such ballots shall be received by the respective county boards of elections at least ten days before the date of holding such primaries. The expense of printing and distributing such official ballots shall be paid by the state treasurer out of funds not otherwise appropriated, upon the warrant of the chairman of the state board of elections. Said ballots so printed by the state board of elections shall be for each of the several political parties in the state, as hereinafter defined and described, and the names of the respective parties and the candidates shall be printed on the ballots prepared for the respective parties with which the candidates affiliate, and upon the ballots the office for which each aspirant is a candidate shall be indicated. At least six days before the primary election the chairman of the county boards of elections shall distribute the official ballots to the several registrars in their respective counties, and take a receipt therefor, and the registrars shall have them at the several polling places for the use of the electors at the time of holding the primary. Any election or other officer who shall accept appointment and who shall, without previously resigning, fail to perform in good

faith the duties prescribed in this article, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, in the discretion of the court.

1915, c. 101, s. 8; 1917, c. 218.

6029. Only official ballots to be voted; contents and printing of ballots. There shall be voted in primary elections only the official ballots furnished to the chairmen of the county boards of elections and by them to the registrars; and if other ballots be voted in a party primary, they shall not be counted. There shall be as many kinds of official ballots as there are political parties members of which have filed notice of their candidacy for primary elections, and all ballots shall be printed on white paper in black ink and shall be of the same size and style of printing; and the name of the political party whose ballot it is shall be printed in bold-face type at the top of the ballot.

1915, c. 101, s. 9; 1917, c. 218.

6030. How choice indicated on ballot; how names of candidates placed thereon. Each elector wishing to participate in such primary election shall be permitted to vote for his choice for the nomination for president of the United States by name, to be inserted in the ballot arranged therefor, and to vote for his choice of candidates for the nomination for all other offices provided for by and subject to the provisions of this article, including candidates for the United States senate, by making a cross-mark in the small squares opposite the names of the respective candidates for whom he elects to vote. It shall be the duty of the board of elections having in charge the duty of printing the ballots for primary elections to be held under the provisions of this article to so print the ballots that the names of the opposing candidates for any office shall, as far as practicable, alternate in position upon the ballot, to the end that the name of each candidate shall occupy with reference to the name of every other candidate for the same office, first position, second position, and every other position, if any, upon an equal number of ballots, and distribute the said ballots, when so printed, impartially and without discrimination.

1915, c. 101, s. 10; 1917, c. 218.

6031. How primary conducted; ballot boxes; voter's rights; polling books; information given; observation allowed. There shall be provided for each election precinct at the expense of the respective counties three ballot boxes, labeled respectively, "National Primary Box," "State Primary Box," and "Legislative Primary Box," for each political party; in the first whereof shall be deposited all ballots for president and vice-president of the United States and members of congress; in the second whereof shall be deposited all ballots for state and district offices other than senatorial districts; and in the third whereof shall be deposited all ballots for members of the general assembly.

When an elector offers himself and expresses the desire to vote at a primary held under this article, he shall declare the political party with which he affiliates and in whose primary he desires to vote, as hereinbefore provided, and he shall then be furnished by the registrar ballots, as desired by him, of the political party with which he affiliates, which he may vote, and he shall not in such primary be allowed to vote a ticket marked with the name of any political party of which he has not declared himself to be a member as herein defined; but any

one may at any time any elector proposes to vote challenge his right to vote in the primary of any party upon the ground that he does not affiliate with such party or does not in good faith intend to support the candidates nominated in the primary of such party, and it shall be the duty of the registrar and judges of election upon such challenge to determine whether or not the elector has a right to vote in said primary: Provided, that he may vote for candidates for all or any of the offices printed on such ballot, as he shall elect, and he shall be required to disclose the name of the political party printed thereon and no more. He may in the manner hereinbefore prescribed mark such names as he desires, and these and only these shall be counted as being voted for by him, and he shall have the right to so vote for only one candidate as his choice for each office. If he be a qualified elector and has elected to vote in the primary of a party of which he has declared himself to be a member, as provided herein, he may deposit his ballots in the proper ballot boxes, or he may permit the registrar or a judge of election to so deposit them for him. Any person who has become of the age of twenty-one years between the time when the books closed for registration and the day of the primary election, and who is otherwise a qualified elector, and who desires to register and vote as a member of a political party, may do so in the manner herein provided.

At the time of voting, the name of the voter shall be entered on a primary polling book to be provided and kept for the purpose, under rules prescribed by the state board of elections, which said book shall be provided at the expense of the state for the first election held under this article and subsequently at the expense of the several counties, and upon said book shall be entered, opposite the name of such voter and in proper column provided for the purpose, the name of the political party whose ticket he shall have voted, and said books shall be filed for safe-keeping, until the next election, in the clerk's office of the county in which the ballots are so cast.

It shall be the duty of the county board of elections and of the judges and registrar in each precinct to make all necessary arrangements by providing a proper number of places in each precinct whereby each voter shall have an opportunity, both at all primary and all general elections, to arrange his ballot in secret and without interference from any other person whatsoever; and it shall be the duty of the judges of election and registrars holding primary and general elections to give any voter any information he may desire in regard to the kind of ballot which he may be entitled to vote and the names of the candidates thereon, and, in response to questions asked by him, they shall communicate to him any information which he may desire in regard to the kind of ballot which he may be entitled to vote and the names of the candidates thereon, and, in response to questions asked by him, they shall communicate to him any information necessary to enable him to mark his ballot as he desires.

At the written request of the chairman of any political party of any county, the judges and registrar of any precinct shall designate the name of some elector in each precinct, if there be such elector who affiliates with such political party, who shall be furnished the opportunity to observe the method of holding such primary election; but such elector shall in no manner interfere with the method of holding such election or interfere or communicate with or observe any voter in casting his ballot, but shall make such observation and notes of the manner of

holding such election and the counting of the ballots as he may desire: Provided, nothing herein contained shall be construed to prevent any elector from casting at the general election a free and untrammelled ballot for the candidate or candidates of his choice.

1915, c. 101, s. 11; 1917, c. 218.

Under this section it is the duty of the registrars and judges of election to determine the right of an applicant to vote, and their determination is final: *Brown v. Costen*, 176-63. In the absence of statutory provision the courts have no jurisdiction to interfere with political parties in the choice of candidates, nor to review the action of the primary election officers: *Ibid*.

6032. Counting ballots and certifying results. When the polls have been closed, the primary ballot boxes shall be opened in the presence of the registrars and both judges of election at the several precincts and such electors as may desire to be present: Provided, the registrars and judges may fix such space as they may consider reasonable and necessary to enable them to count the ballots. The ballots of each of the several parties in the boxes in each precinct shall be counted and bound in separate packages, and the result shall be certified to the proper county board of elections and by them to the state board of elections upon blanks to be provided by the state board of elections at the expense of the state within the time and, as near as may be, in the manner provided for the certification of the result of general elections.

1915, c. 101, s. 12; 1917, c. 218.

It is the duty of the manager of the primary election to call and count the votes cast for the different candidates: *State v. Cole*, 156-618.

6033. Names of candidates successful at primaries printed on official ballot; where only one candidate. Only those who have filed notice of their candidacy and who shall have complied with the requirements of law applicable to candidates before primaries with respect to such primary elections shall have their names printed on the official ballot of their respective political parties. In all cases where only one aspirant for nomination for a particular political office to be voted for by his political party on the state or district ballot or for the state senate in districts composed of two or more counties shall have filed such notice, the board of elections of the state shall, upon the expiration of the time for filing such notices, declare him the nominee of his party, and his name shall not therefore be placed on the primary ballot, but shall be placed on the ballot to be voted at the general election as his party's candidate for such office.

1915, c. 101, s. 13; 1917, c. 218.

6034. Primaries for county offices; candidates to comply with requirements. At the time of holding primary elections for state officers, as hereinbefore provided, there shall likewise be held primary elections for the nomination of the candidates of the several political parties in the state for county offices; and no one shall be voted for in such primary elections for the nomination of candidates for county offices unless he shall have filed a notice with the appropriate county board of elections and shall have taken the pledge required of candidates filing notice with the state board of elections, as hereinbefore provided, and shall have otherwise complied with the requirements applicable to such candidates for

nomination for state offices, except in so far as such requirements are modified by the provisions of this article with reference to candidates for primary nominations for county offices.

1915, c. 101, s. 14; 1917, c. 218.

6035. Primaries for county offices; notices of candidacy and official ballots. The state board of elections, prior to the time fixed by law for the appointment of registrars and judges of primary elections, shall prescribe, print, and furnish to the several county boards of elections a sufficient number of notices to be filed by candidates desiring to be voted for for nomination for county offices, which said notices shall be substantially the same in form as those required to be filed by candidates for primary nomination for state offices as hereinbefore provided; and the several county boards of elections shall have printed and shall provide official ballots for county officers similar in form and otherwise to the ballots hereinbefore provided for for state officers, and shall distribute the same to the several precincts in the manner and at the time hereinbefore prescribed in the case of state offices.

1915, c. 101, s. 15; 1917, c. 218.

6036. Primaries for county offices; voting and returns. In primary elections for the selection of candidates for county offices the voting shall be done in the manner hereinbefore prescribed for primary elections for state offices, and all of the provisions herein contained governing primary elections for state offices shall apply with equal force to primary elections for county offices when not inconsistent with other provisions herein with reference to such primary elections for county officers; and the returns in such primary elections for county officers shall be certified to the appropriate county board of elections, which shall declare and publish the results.

1915, c. 101, s. 16; 1917, c. 218.

6037. Ballots for general assembly and county officers. The several county boards of elections shall prepare, print, and distribute the ballots for candidates for nomination as members of the general assembly, and on the same ballot of each party shall be printed the names of the candidates for nomination for the several county offices, and such ballots shall be distributed to the several registrars and judges of election at the same time that the ballots for state officers are required to be distributed under the provisions of this article; and county boards of elections shall take receipts therefor, and the several registrars shall have such ballots at their respective polling places for the use of the electors at the time of holding the primary.

1915, c. 101, s. 17; 1917, c. 218.

6038. Boxes for county officers; how labeled. All ballots for nominations for county officers shall be deposited in the box labeled "Legislative Primary Box" hereinbefore provided for, which box, in addition to bearing the label "Legislative Primary Box," shall also immediately thereunder be labeled "County Primary Box."

1915, c. 101, s. 18; 1917, c. 218.

6039. Sole candidate declared nominee. In all cases where only one aspirant for nomination by the party with which he affiliates for the state senate in districts composed of only one county or for the house of representatives of the general assembly or for a county office shall have filed the notice of candidacy in this article required, the county board of elections shall, upon the expiration of the time fixed for filing such notice, declare him the nominee of his party, and his name shall therefore not be placed on the primary ballot, but shall be placed upon the ballot to be voted at the general election as his party's candidate for such office.

1915, c. 101, s. 19; 1917, c. 218.

6040. Primaries for township and precinct officers. The several county boards of elections are hereby given authority to provide for holding in their respective counties primary elections for the choice of candidates for the nominations for township and precinct offices and to prescribe and fix the rules and regulations under which the same shall be held; and the expenses thereof shall be paid by the several counties.

1915, c. 101, s. 20; 1917, c. 218.

6041. Returns of precinct primaries; preservation of ballots. The registrar and judges of election at each precinct in the state of North Carolina shall certify upon blanks prepared and printed by the state board of elections and distributed through the county board of elections to the election officers of each of the several precincts the result of the primary election of each precinct; and there shall be made by the judges of election and registrar at each precinct two copies of their returns, one copy of which shall be filed by them with the clerk of the court of their county for public inspection, and one shall be filed with the county board of elections to be kept on file by it; and it shall be the duty of the judges and registrars to preserve and keep for four months after each election the original ballots cast at such election, which ballots, after being counted, shall be placed in bundles, a separate and distinct bundle to be made of the ballots of each and every political party cast in each of the boxes, and each box in which ballots were cast shall be carefully sealed up before the election officers shall separate, so that nothing put in may be taken from them, and the signatures of the registrar and judges of each precinct shall be inscribed at the same time on a seal placed on each box of the precinct, and no box shall be opened except upon the written order of the county board of elections or a proper order of court. The state board of elections, in preparing the printed form for returns to be made by the judges and registrars of the several precincts to the county boards of elections, and in preparing the forms for the returns to be made by the county boards of elections to the state board of elections of the result of primary elections, shall prepare them in such form as will show the number of votes cast for each candidate for nomination for office.

1915, c. 101, s. 21; 1917, c. 179, s. 1; 1917, c. 218.

6042. County board tabulates results of primaries; returns in duplicate. The county boards of elections of the several counties shall tabulate the returns made by the judges and registrars of the several precincts in their respective counties

with reference to candidates before the primaries, so as to show the total number of votes cast for each candidate of each political party for each office, and, when thus compiled on blanks to be prepared and furnished by the state board of elections for the purpose, these returns, in the case of officers other than the state senate in districts composed of only one county, the house of representatives and county offices, shall be made out for each county in duplicate, and one copy shall be forwarded to the state board of elections and one copy shall be filed with the clerk of the superior court of the county from which such returns are made; in the case of member of the state senate in district composed of only one county, member of the house of representatives and county officers, such returns shall be made out in duplicate, and one copy thereof filed with the clerk of the superior court and one copy retained by the county board of elections, which shall forthwith, as to such last mentioned offices, publish and declare the results.

1915, c. 101, s. 21½; 1917, c. 218.

Section referred to: Johnston v. Board of Elections, 172-162.

6043. State board tabulates returns and declares nominees. The state board of elections shall compile and tabulate the returns for each candidate for each office for each political party voted for in the primary except in cases in which it is in this article provided that the result shall be declared by the several county boards of election, and if a majority of the entire votes cast for all the candidates of any political party for a particular office shall be for one candidate, he shall be declared by the state board of elections the nominee of his political party for such office.

1915, c. 101, s. 22; 1917, c. 218.

6044. Returns of election boards to be under oath. The chairman or secretary of each of the county boards of elections and the chairman or secretary of the state board of elections shall file with all returns and declarations of results of election required by law to be filed by such boards an affidavit that the same are true and correct according to the returns made to them; and a judge of election or registrar shall accompany the precinct returns as to results of primary elections with an affidavit that the same are true and correct, according to the votes cast and correctly counted by them.

1915, c. 101, s. 23; 1917, c. 218.

6045. When results determined by plurality or majority; second primaries. Nominations for president and vice-president of the United States in the several congressional districts shall be determined by a plurality of the votes cast, and in the case of all other officers mentioned in this act nominations shall be determined by a majority of the votes cast.

If in the case of an office other than the offices of president and vice-president no aspirant shall receive a majority of the votes cast, a second primary, subject to the conditions hereinafter set out, shall be held in which only the two aspirants who shall have received the highest and next highest number of votes shall be voted for: Provided, that if either of such two shall withdraw and decline to run, and shall file notice to the effect with the appropriate board of elections, such board shall declare the other aspirant nominated: Provided further, that

unless the aspirant receiving the second highest number of votes shall, within five days after the result of such primary election shall have been officially declared, and such aspirant has been notified by the appropriate board of elections, file in writing with the appropriate board of elections a request that a second primary be called and held, the aspirant receiving the highest number of votes cast shall be declared nominated by such appropriate board.

If a second primary be ordered by the state or a county board of elections, it shall be held four weeks after the first primary, in which case such second primary shall be held under the same laws, rules, and regulations as are provided for the first primary, except that there shall be no further registration of voters other than such as may have become legally qualified after the first primary election, and such persons may register on the day of the second primary, and shall be entitled to vote therein under the provisions of this article.

1915, c. 101, s. 24; 1917, c. 179, s. 2; 1917, c. 218.

What is a sufficient compliance with the statute in declaring the result: *Johnston v. Board of Elections*, 172-162. When an election has been held and the result declared, if no one has a majority, a second primary may be held, if demanded in five days by the person receiving the second highest number of votes; otherwise the person receiving the highest number of votes becomes the candidate: *Ibid*.

While the courts will not interfere with the choice of candidates by political parties, they may require election officers to perform a particular act specified in the statute: *Brown v. Costen*, 176-63; *Johnston v. Board of Elections*, 172-162. The proper remedy to require the election officers to place a candidate's name on the ballot is by mandamus, and not quo warranto: *Johnston v. Board of Elections*, 172-162.

6046. Attorney-general to aid boards by advice and as to forms. In the preparation and distribution of ballots, poll books, forms of returns to be made by registrars and judges, and forms of the returns to be made by the county boards of elections to the state board of elections and to be made by the state board of elections, and all other forms to be prepared by the attorney-general of the state of North Carolina, and it shall be the duty of the state board of elections to call to its aid the attorney-general of the state of North Carolina, and it shall be the duty of the attorney-general to advise and aid in the preparation of all such ballots, books, and forms.

1915, c. 101, s. 25; 1917, c. 218.

6047. Returns, canvasses, and other acts governed by general election law. The returns to be made by the registrars and judges as to the results of primary elections, and the canvassing by the county boards of elections of such results and declarations of such results, and the reports to be made by the county boards of elections to the state board of elections and other acts and things to be done in ascertaining and declaring the results of primary elections, unless otherwise provided herein, shall be done within the time before or after the primary election, and, as near as may be, under the circumstances prescribed for like acts and things done with reference to a general election, unless such acts and things prescribed to be done within certain times under the general election law shall, with respect to primary elections, be changed by general rules promulgated by the state board of elections for what may seem to them a good cause.

1915, c. 101, s. 26; 1917, c. 218.

6048. Election board may refer to ballot boxes to resolve doubts. When, on account of errors in tabulating returns and filling out blanks, the result of an election in any one or more precincts cannot be accurately known, the county board of elections and the state board of elections shall be allowed access to the ballot boxes in such precincts to make a recount and declare the results, which shall be done under such rules as the state board of elections shall establish to protect the integrity of the election and the rights of the voters.

1915, c. 101, s. 27; 1917, c. 218.

This section confers no authority upon the court to investigate and pass upon the methods of conducting the primary: *Brown v. Costen*, 176-63.

6049. Official ballots for general election of state and district officers; preparation and distribution. It shall be the duty of the state board of elections, in the preparation of ballots for the general election, to prepare one official ballot for each political party for all state and district officers and distribute such ballots to the several county boards of elections in such time that they will be received at least ten days before the date of the general election, whereupon the several county boards of elections shall distribute such ballots to the several registrars and judges of election in their respective counties, so that they will be received at least three days before the date of the general election; and on the ballot of each political party which shall have nominated candidates in the primary shall be printed the name of such party, and under the names of the respective political parties shall appear the offices to be filled by the election and the names of the nominees of each political party for such offices respectively; the expense whereof shall be paid by the state treasurer out of funds not otherwise appropriated, upon warrant of the chairman of the state board of elections.

1915, c. 101, s. 28; 1917, c. 218.

6050. Official ballots for general election of county officers; preparation and distribution. It shall be the duty of the several county boards of elections, in the preparation of ballots for the general election, to prepare one official ballot for each political party for members of the general assembly and county offices, and distribute such ballots to the several registrars and judges of election of their respective counties in such time that they will be received by such registrars and judges of election at least three days before the date of the general election; and on the ballot of each political party which shall have nominated candidates in the primary shall be printed the name of such party; and under the names of the respective political parties shall appear the offices to be filled by the election and the names of the nominees; the expense whereof shall be paid by the several counties upon the warrant of the chairmen of the several county boards of elections.

1915, c. 101, s. 29; 1917, c. 218.

6051. Names on official ballot; nonpartisan candidates added on petition. No name other than the name of the person chosen in the primary shall be printed as a candidate of any political party for any office; but upon the petition of any elector, if filed within the time allowed by law for declaring the result of primary elections, when such petitioner is qualified by law to hold a particular office, that

his name be placed on the official ballot for the general election as a nonpartisan candidate for such office, said petition to contain a statement under oath that the person so applying does not affiliate with any political party, it shall be the duty of the state board of elections to print the name of such person as a nonpartisan candidate for office: Provided, that in addition to said petition there shall be filed with the state board of elections and within the same time a petition duly signed by ten per cent of those entitled to vote for the candidate for such office, according to the vote cast in the last gubernatorial election in the political division in which such candidate may be voted for. The state board of elections shall prescribe general rules whereby it may be advised as to the authenticity and genuineness of the signatures of such petitioning persons.

1915, c. 101, s. 30; 1917, c. 218.

See *Johnston v. Board of Elections*, 172-162.

6052. Political party defined. The term political party as herein used shall include all political parties having candidates who were voted for for state offices at the general election in nineteen hundred and fourteen, and, in addition, any political party which may be declared to be such by a declaration signed by ten thousand legal voters and filed with the state board of elections thirty days before the time fixed for candidates for state offices to file notices with said board of their candidacy.

1915, c. 101, s. 31; 1917, c. 218.

NOTE.—For definition of political party under the general election law, see this chapter, s. 5913.

6053. Filling vacancies occurring after primary. In the event that any person nominated in any primary election as the candidate of a political party for a state office shall die, resign, or for any reason become ineligible or disqualified between the date of such primary election and ensuing general election, the vacancy caused thereby may be filled by the action of the state executive committee of such political party; in the event of such vacancy in the case of a district office, the same may be filled by the action of the executive committee for such district of such political party; and in the event of such vacancy in the case of a county office, or the house of representatives or the state senate in a district composed of only one county, the same may be filled by the action of the executive committee of the party affected thereby in the county wherein such vacancy occurs: Provided, that should a vacancy occur in any office after the primary has been held, a nomination shall be made in like manner as above provided, and the name of the person so nominated shall be placed on the official ballot.

1915, c. 101, s. 33; 1917, c. 179, s. 3; 1917, c. 218.

6054. Certain counties excepted. This article shall not apply to nominations for candidates for county offices and members of the house of representatives in the following counties providing for a primary with respect to said county officers and members of the house of representatives, to wit: Alamance, Alexander, Alleghany, Ashe, Brunswick, Burke, Cabarrus, Caldwell, Catawba, Cherokee, Clay, Dare, Davidson, Davie, Duplin, Edgecombe, Gaston, Graham, Halifax, Hyde, Johnston, Lee, Macon, Martin, McDowell, Mitchell, Montgomery, New Hanover, Northampton, Pender, Polk, Sampson, Stanly, Surry, Transylvania,

Tyrrell, Union, Watauga, Wilkes: Provided, that in any county whose county offices are hereby exempted, if voters in number as great as one-fifth of the total vote cast for governor in such county at the preceding gubernatorial election shall petition the board of county commissioners of such county for an election thereon, it shall be the duty of the said board to order an election at the next succeeding general election upon the method of nominating county officers and member or members of the house of representatives. At such election those favoring the nomination of county and legislative officers by primary shall cast ballots on which is written or printed "For County Primary"; those opposed shall cast ballots bearing the words "Against County Primary." If a majority of the votes cast in such election shall be "For County Primary," then the provisions of this act shall thereafter apply to such county, and it shall be no longer exempted. Otherwise, such exception shall remain in force.

1915, c. 101, s. 34; 1915, c. 102; 1917, cc. 53, 86, 89, 90, 91, 92, 112, 137, 222, 225, 218; P. L. 1917, cc. 312, 327, 351, 373; 1919, cc. 41, 81, 95, 173, 278, 283, 337.

6055. Certain local acts repealed. All laws and clauses of laws relating to primary elections in Wake county in conflict with this article be and the same are hereby repealed. All local laws regulating primaries as to county or legislative officers in those counties not excepted in the preceding section from the provisions of this article are hereby repealed.

1915, c. 101, s. 34½; 1917, c. 218.

CHAPTER 98

FIREMEN'S RELIEF FUND

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ART. 1. STATE APPROPRIATION

6056. Annual appropriation. The sum of two thousand five hundred dollars is hereby appropriated annually and shall constitute a "firemen's relief fund."

Rev., s. 4391; 1891, c. 468.

6057. Payment by state treasurer. The treasurer of the state shall pay the amount constituting the firemen's relief fund on the warrant of the auditor, one-fourth to the treasurer of the North Carolina state volunteer firemen's association, properly chartered by law, and three-fourths to the treasurer of the North Carolina state firemen's association. The treasurer of the North Carolina state volunteer firemen's association shall give bond, and the association shall disburse the funds in the same manner and under the same rules as the North Carolina state firemen's association.

Rev., s. 4392; 1891, c. 468, s. 2; 1893, c. 474; 1895, c. 102.

6058. Application of fund. The money so paid into the hands of the treasurer of the North Carolina state firemen's association shall be known and remain as the "firemen's relief fund" of North Carolina, and shall be used as a fund for the relief of firemen, members of such association, who may be injured or rendered sick by disease contracted in the actual discharge of duty as firemen, and for the relief of widows, children, and if there be no widow or children, then dependent mothers of such firemen killed or dying from disease so contracted in such discharge of duty; to be paid in such manner and in such sums to such individuals

of the classes herein named and described as may be provided for and determined upon in accordance with the constitution and by-laws of said association, and such provisions and determinations made pursuant to said constitution and by-laws shall be final and conclusive as to the persons entitled to benefits and as to the amount of benefit to be received, and no action at law shall be maintained against said association to enforce any claim or recover any benefit under this article or under the constitution and by-laws of said association; but if any officer or committee of said association omit or refuse to perform any duty imposed upon him or them, nothing herein contained shall be construed to prevent any proceedings against said officer or committee to compel him or them to perform such duty.

Rev., s. 4393; 1891, c. 468, s. 3.

6059. Treasurer to give bond and file report. The treasurer of the North Carolina state firemen's association shall give a bond to the state of North Carolina with good and sufficient sureties to the satisfaction of the treasurer of the state of North Carolina in double the sum received by him of the state treasurer for the faithful performance of his duties under this article, and shall make a detailed report to the state treasurer of the yearly expenditures of the appropriation under this chapter on or before the end of the fiscal year.

Rev., s. 4394; 1891, c. 468, s. 4.

6060. Meaning of fire duty. The line of duty entitling one to participate in the fund shall not be so construed as to mean any other duty except actual fire duty, which shall consist of service in the fire department from the time of the fire alarm until the members are dismissed by the company officers at roll-call, also any actual duty connected with the fire department when directed to perform the same by the officer in charge.

Rev., s. 4395; 1891, c. 468, s. 5.

6061. Who may become members. Any fireman of good moral character in North Carolina, and belonging to an organized fire company, who will comply with the requisitions of the constitution and by-laws of the North Carolina state firemen's association may become a member of said association, and any organized fire company in North Carolina holding itself ready for duty may, upon compliance with the requirements of said constitution and by-laws, become a member of the North Carolina state firemen's association.

Rev., s. 4396; 1891, c. 468, s. 6.

6062. Applied to members of regular fire company. The provisions of this chapter shall apply to any fireman who is a member of a regularly organized fire company.

Rev., s. 4397; 1891, c. 468, s. 7.

NOTE.—Volunteer firemen at state hospitals for the insane not entitled to share in the fund. See Hospitals for the Insane, sec. 6183.

ART. 2. FUND DERIVED FROM FIRE INSURANCE COMPANIES

6063. Fire insurance companies to report premiums collected. Every fire insurance company, corporation, or association doing business in any incorporated

town or city in North Carolina that has, or may hereafter have, a regularly organized fire department under the control of the mayor and city council or other governing body of said town or city, and which has in serviceable condition for fire duty apparatus and equipment amounting in value to one thousand dollars or more, and which enforces the fire laws to the satisfaction of the insurance commissioner, shall return to the insurance commissioner of the state of North Carolina a just and true account of all premiums collected and received from all fire insurance business done within the corporate limits of such towns and cities during the year ending December thirty-first, or such portion thereof as they may have transacted such business in such towns and cities. Such companies, corporations, or associations shall make said returns within sixty days from and after the thirty-first day of December of each year.

1907, c. 831, s. 1; 1919, c. 180.

6064. Tax on receipts for premiums. Every fire insurance company, corporation, or association as aforesaid shall, within seventy-five days from December thirty-first of each year, deliver and pay to the state insurance commissioner the sum of fifty cents out of and from every one hundred dollars, and at that rate, upon the amount of all premiums written on fire and lightning policies covering property situated within the incorporated limits of such towns and cities during the year ending December thirty-first in each year, or for such portion of each year as said company, corporation, or association shall have done business in said towns and cities.

1907, c. 831, s. 2.

6065. Insurance commissioner to investigate returns and collect tax. Every such company, corporation, or association shall make accurate returns of all business done, both on fire and lightning insurance, covering property situated within the limits of such towns and cities; and in case any fraud, misrepresentation, or mistake of any returns, as provided for in this article, be apparent, it shall be the duty of the insurance commissioner to investigate such returns and collect the amount which he shall find to be due.

1907, c. 831, s. 3.

6066. Penalty for failure to report and pay tax. Every fire insurance company, association, or corporation aforesaid which shall knowingly or wilfully fail or neglect to report or pay over any of the moneys due on premiums as aforesaid, at the times and in the manner specified in this article, or shall be found upon examination to have made a false return of business done by them, shall for each offense forfeit and pay the sum of three hundred dollars for the use and benefit of the fire department of such town or city, to be recovered in a civil action in the name of the town or city.

1907, c. 831, s. 4.

6067. Insurance commissioner to pay fund to town treasurer. The insurance commissioner shall pay over the money so collected from the insurance companies, corporations, or associations, as aforesaid, doing business in the several towns and cities in the state having or that may hereafter have organized fire departments as provided in this article, to the treasurer of each town or city, to be held

by him as a separate and distinct fund, subject to the use of the board of trustees of the firemen's relief fund in each town or city, composed of five members, residents of said city or town as hereinafter provided for, to be used by them for the purposes as named in section 6069.

1907, c. 831, s. 5.

6068. Trustees appointed; organization. In each town or city complying with and deriving benefits from the provisions of this article there shall be appointed annually, in January, a local board of trustees, known as the trustees of the firemen's relief fund, to be composed of five members, two of whom shall be named by the members of the local fire department, two by the mayor and board of aldermen or other local governing body, and the remaining member by the state insurance commissioner, all to hold office for two years, or until their successors are appointed, and to serve without pay for their services. They shall immediately after appointment organize by electing from their members a chairman and a secretary and treasurer, which two last positions may be held by the same person. The treasurer of said board of trustees shall give a good and sufficient bond, to be approved by the insurance commissioner, for the faithful and proper discharge of the duties of his office.

1907, c. 831, s. 6.

6069. Disbursement of fund by trustees. The board of trustees shall have entire control of the funds derived from the provisions of this article, and shall disburse the funds only for the following purposes:

1. To safeguard the men in active service from loss of time from their daily work, occasioned by sickness contracted or injury received while in the performance of their duties as firemen.

2. To provide a reasonable support for those actually dependent upon the services of any fireman who may lose his life in the fire service of his town, city, or state, either by accident or from disease contracted or injury received by reason of such service. The amount is to be determined according to the earning capacity of the deceased.

3. To safeguard any fireman who has honorably served for a period of ten years in the fire service of his city or town from ever becoming an inmate of any almshouse or actually dependent upon charity.

1907, c. 831, s. 6; 1919, c. 180.

6070. Trustees to keep account and file report; effect of failure. The board of trustees shall keep a correct account of all moneys received and disbursed by them, and shall at the annual meeting of the North Carolina state firemen's association render an itemized statement of the same, for publication in the annual report, a copy of which report shall be made annually to the state insurance commissioner; and in case any board of trustees in any of the towns and cities benefited by this article shall neglect or fail to perform their duties, or shall wilfully misappropriate the funds entrusted to their care, or shall neglect or fail to report at the annual meeting of the state association, then the insurance commissioner shall withhold any and all further payments to such board of trustees, or their successors, until the matter has been fully investigated by an official of the state

firemen's association, and adjusted to the satisfaction of the state insurance commissioner. Should such payments be unadjusted for a period of fifteen months from the time when such payment would otherwise have been made, then the insurance commissioner shall pay over the said payment to the North Carolina state firemen's association to be used by the association as a general relief fund for the purpose of assisting any local board of trustees where bona fide claims for benefits arising under purposes one and two of the preceding section shall have exceeded the income arising from the local one-half per cent tax.

1907, c. 831, s. 7.

6071. Municipal clerk to certify list of fire companies. The clerk of any city, town, village, or other municipal corporation having an organized fire department shall, on or before the thirty-first day of October in each year, make and file with the insurance commissioner his certificate, stating the existence of such department, the number of steam, hand, or other engines, hook and ladder trucks, and hose carts in actual use, the number of organized companies, and the system of water supply in use for such departments, together with such other facts as the insurance commissioner may require, on a blank to be furnished by him. If the certificate required by this section is not filed with the insurance commissioner on or before October thirty-first in any year, the city, town or village so failing to file such certificate shall be deemed to have waived and relinquished its rights for such year to the appropriation herein provided for.

1907, c. 831, s. 8.

6072. Fire department to be member of state association. For the purpose of supervision and as a guaranty that provisions of this article shall be honestly administered in a business-like manner, it is provided that every department enjoying the benefits of this law shall be a member of the North Carolina state firemen's association, and comply with its constitution and by-laws. And it is further provided that a sum not to exceed five per cent of the gross proceeds received by each town or city from the provisions of this article shall be turned over to the state firemen's association for general purposes. One-fourth of the funds arising from the five per cent mentioned herein shall be paid to the colored fire association of North Carolina for general purposes.

1907, c. 831, s. 9; 1919, c. 180.

6073. No discrimination on account of color. Inasmuch as there are in a number of the towns and cities of this state fire companies composed exclusively of colored men, it is expressly provided that the local boards of trustees shall make no discrimination on account of color in the payment of benefits.

1907, c. 831, s. 10.

CHAPTER 99

FIRE PROTECTION

ART. 1. INVESTIGATION OF FIRES AND INSPECTION OF PREMISES.

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- 6075. Insurance commissioner to make examination; arrest and prosecution.
- 6076. Powers of commissioner in investigation.
- 6077. Inspection of premises; dangerous material removed.
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- 6081. Construction of buildings regulated.
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ART. 1. INVESTIGATION OF FIRES AND INSPECTION OF PREMISES

6074. Fires investigated; reports; records. The insurance commissioner and the chief of the fire department, or chief of police where there is no chief of fire department, in municipalities and towns, and the sheriff of the county where such fire occurs outside of a municipality, are hereby authorized to investigate the cause, origin, and circumstances of every fire occurring in such municipalities or counties in which property has been destroyed or damaged, and shall specially make investigation whether the fire was the result of carelessness or design. A preliminary investigation shall be made by the chief of fire department or chief of police, where there is no chief of fire department in municipalities, and by the sheriff of the county where such fire occurs outside of a municipality, and must be begun within three days, exclusive of Sunday, of the occurrence of the fire, and the insurance commissioner shall have the right to supervise and direct the investigation when he deems it expedient or necessary. The officer making the investigation of fires shall forthwith notify the insurance commissioner, and must within one week of the occurrence of the fire furnish to the commissioner a written statement of all the facts relating to the cause and origin of the fire, the kind, value, and ownership of the property destroyed, and such other information as is called for by the blanks provided by the commissioner. The insurance commissioner shall keep in his office a record of all fires occurring in the state, together with all facts, statistics, and circumstances, including the origin of the fires, which are determined by the investigations provided for by this article. This record shall at all times be open to public inspection.

Rev., s. 4818; 1899, c. 58; 1901, c. 387; 1903, c. 719.

NOTE.—Fire insurance company to report fire losses. See insurance, s. 6421.

6075. Insurance commissioner to make examination; arrest and prosecution. It is the duty of the insurance commissioner to examine, or cause examination to be made, into the cause, circumstances, and origin of all fires occurring within

the state to which his attention has been called in accordance with the provisions of the next preceding section, or by interested parties, by which property is accidentally or unlawfully burned, destroyed, or damaged, whenever in his judgment the evidence is sufficient, and to specially examine and decide whether the fire was the result of carelessness or the act of an incendiary. The commissioner shall, in person, by deputy or otherwise, fully investigate all circumstances surrounding such fire, and, when in his opinion such proceedings are necessary, take or cause to be taken the testimony on oath of all persons supposed to be cognizant of any facts or to have means of knowledge in relation to the matters as to which an examination is herein required to be made, and shall cause the same to be reduced to writing. If he is of the opinion that there is evidence sufficient to charge any person with the crime of arson, or other wilful burning, he shall cause such person to be arrested, charged with such offense, and prosecuted, and shall furnish to the solicitor of the district all such evidence, together with the names of witnesses and all the information obtained by him, including a copy of all pertinent and material testimony taken in the case.

Rev., s. 4819; 1899, c. 58, s. 2; 1901, c. 387, s. 2; 1903, c. 719.

6076. Powers of commissioner in investigations. The insurance commissioner, or his deputy appointed to conduct such examination, has the powers of a trial justice for the purpose of summoning and compelling the attendance of witnesses to testify in relation to any matter which is by provisions of this article a subject of inquiry and investigation, and may administer oaths and affirmations to persons appearing as witnesses before them. False swearing in any such matter or proceeding is perjury and shall be punished as such. The commissioner or his deputy has authority at all times of the day or night, in performance of the duties imposed by the provisions of this article, to enter upon and examine any building or premises where any fire has occurred, and other buildings and premises adjoining or near the same. All investigations held by or under the direction of the commissioner or his deputy may, in their discretion, be private, and persons other than those required to be present by the provisions of this article may be excluded from the place where the investigation is held, and witnesses may be kept apart from each other and not allowed to communicate with each other until they have been examined.

Rev., s. 4820; 1899, c. 58, s. 3; 1901, c. 387, s. 3.

6077. Inspection of premises; dangerous material removed. The insurance commissioner, or the chief of fire department or chief of police where no chief of fire department, or local inspector of buildings in municipalities where such officer is elected or appointed, has the right at all reasonable hours, for the purpose of examination, to enter into and upon all buildings and premises in their jurisdiction. It is the duty of the insurance commissioner to require in all municipalities of the state that such officers make in their respective municipalities annual inspections of the buildings therein and quarterly inspection of all premises within the fire limits, and report in detail the results of their inspection to the insurance commissioner upon blanks furnished by him. When any of such officers find in any building or upon any premises combustible material or inflammable conditions dangerous to the safety of such building or premises they shall order the same to be removed or remedied, and this order shall be forthwith

complied with by the owner or occupant of such building or premises. The owner or occupant may, within twenty-four hours, appeal to the insurance commissioner from the order, and the cause of the complaint shall be at once investigated by his direction, and unless by his authority the order of the officer above named is revoked it remains in force and must be forthwith complied with by the owner or occupant. The insurance commissioner, fire chief, or fire committee shall make an immediate investigation as to the presence of combustible material or the existence of inflammable conditions in any building or upon any premises under their jurisdiction upon complaint of any person having an interest in such building or premises or property adjacent thereto. The commissioner may, in person or by deputy, visit any municipality and make such inspections alone or in company with the local officer. The local inspector shall be paid by the municipality a reasonable salary or proper fees to be fixed by its governing board.

Rev., s. 4821; 1899, c. 58, s. 4; 1901, c. 387, s. 4; 1903, c. 719.

NOTE.—For regulation of buildings, inspection, etc., see Municipal Corporations, art. 11.

6078. Payment of expenses. The license tax imposed upon fire insurance companies shall be used by the insurance commissioner for the purpose of investigating all fires occurring in the state, for the payment of expenses, including counsel fees, expense of deputy, detectives and officers, incurred by him in the performance of the other duties imposed upon him by this article, for the employment of a competent man to give instructions to fire companies, and for the expense of a better inspection of buildings in cities and towns. Any part of such fund unexpended at the end of the fiscal year, April first, shall be paid by the insurance commissioner into the state treasury for general purposes as other funds collected by him.

Rev., s. 4823; 1899, c. 58, s. 6; 1901, c. 387, s. 6; 1903, c. 719, s. 2; 1915, c. 109, s. 2; 1919, c. 186, s. 7.

6079. Reports of insurance commissioner. The insurance commissioner shall submit annually, as early as consistent with full and accurate preparation, and not later than the first day of June, a detailed report of his official action under this chapter, and it shall be embodied in his report to the general assembly. He shall, in his annual report, make a statement of the fires investigated, the value of property destroyed, the amount of insurance, if any, the origin of the fire, when ascertained, and the location of the property damaged or destroyed, whether in town, city, or country. He shall also file annually an itemized statement, under oath, of all money received by him and disbursed under this chapter.

Rev., s. 4824; 1899, c. 58, s. 7; 1901, c. 387, s. 7; 1915, c. 109, s. 1.

6080. Fire prevention and fire-prevention day. It is the duty of the insurance commissioner and superintendent of public instruction, as far as practicable, to provide for the teaching of "Fire Prevention" in the colleges and schools of the state, and to arrange for a text-book adapted to such use. The ninth day of October of every year shall be set aside and designated as "Fire Prevention Day," and the governor shall issue a proclamation urging the people to a proper observance of the day, and the insurance commissioner shall bring the day and

its observance to the attention of the officials of the municipalities of the state, and especially to the firemen, and where possible arrange suitable programs to be followed in its observance.

1915, c. 166, s. 5.

NOTE.—For teaching fire prevention in schools, see also Education, sec. 5542.

ART. 2. FIRE-ESCAPES

6081. Construction of buildings regulated. All hotels, lodging houses, school dormitories, hospitals or sanitariums hereafter constructed in this state, over two stories in height and over one hundred feet in length, shall be constructed so that there shall be at least two pairs of stairs for the use of guests leading from the ground floor to the uppermost story, and for larger buildings such number as the proper officials shall designate. Every hotel, lodging house, school dormitory, hospital or sanitarium in the state, three stories and over in height, shall be provided, without delay, with permanent iron balconies with iron stairs leading from one balcony to the other, to be placed at the end of each hall above the second story, in case such hotel, lodging house, school dormitory, hospital or sanitarium is over one hundred and fifty feet in length, and in other cases such number as may be directed by the insurance commissioner or chief of fire department of such city or town in which such hotel, lodging house, school dormitory, hospital or sanitarium is located. Such balconies and iron stairs are to be constructed at the expense of the owner of the building. Where hotels, lodging houses, school dormitories, hospitals or sanitariums, already built and only three stories in height, are, in the opinion of the insurance commissioner, provided with sufficient inner stairways, so located as to furnish sufficient egress in case of fire, the commissioner may waive the requirement for outside iron balconies and stairs. This article shall not apply to private residences at which lodgers are not received for hire.

1909, c. 637, s. 1.

6082. Places of public amusement, how constructed. Every theater, opera house, or other like place of public amusement shall have as many doors for egress therefrom as may be necessary and can be made consistently with the proper strength of the building; all such doors shall be hung so as to open outwardly, or both outwardly and inwardly; and the seats therein shall be arranged in rows properly spaced, with aisles of adequate width, so as to afford easy egress therefrom. All scenery shall be made as secure against becoming inflamed as reasonably practical, and also all reasonably practical arrangements shall be made for the constant supply of water and other means for extinguishment of fires, and they shall be kept constantly effective during the presence of an audience. The insurance commissioner may require all theaters to be equipped with a front curtain of asbestos or other fireproof material, to be furnished by owner of the building, and this curtain shall be raised and lowered not less than twice before each performance, in order to guarantee its being in perfect working order.

1909, c. 637, s. 2.

6083. Doors in certain buildings to open outwardly. In all public schoolhouses and other buildings, and also all theaters, assembly rooms, halls, churches, fac-

tories with more than twenty employees, and all other buildings or places of public resort where people are accustomed to assemble (excepting schoolhouses and churches of one room on the ground floor) which shall hereafter be erected, together with all those heretofore erected and which are still in use as such buildings or places of resort, the doors for ingress and egress shall be so hung as to open outwardly from the audience rooms, halls, or workshops of such buildings or places, or the doors may be hung on double hinges, so as to open with equal ease outwardly or inwardly.

1909, c. 637, s. 3.

6084. Fire-escapes to be provided. All factories, manufacturing establishments, or workshops of three or more stories in height, in which thirty or more people are employed above the first floor thereof, shall be provided with one or (if the proper officials shall deem necessary) more outside fire-escapes, not less than six feet in length and three feet in width, properly and safely constructed, guarded by iron railings not less than three feet in length and taking in at least one door and one window or two windows at each story and connected with the interior by easily accessible and unobstructed openings; and the fire-escapes shall connect by iron stairs not less than twenty-four inches wide, the steps to be not less than six inches tread, placed at not more than an angle of forty-five degrees slant, and protected by a well secured hand-rail on both sides, with a twelve-inch-wide drop ladder from the lowest platform reaching to the ground. No outside fire-escapes shall be required where there are already sufficient inside stairways. For every twenty people employed on any floor above the second floor of every factory and workshop there shall be one rope or portable fire-escape, and each story shall be amply supplied with means for extinguishing fires. All the main doors, both inside and outside, in factories, except fire doors, shall open outwardly, when the proper official shall so direct, and no outside or inside door of any building wherein operatives are employed shall be locked, bolted, or otherwise fastened during the hours of labor so as to prevent egress.

1909, c. 637, s. 4.

6085. Ways of escape provided. Every building now or hereafter used, in whole or in part, as a public building, public or private institution, schoolhouse, church, theater, public hall, place of assembly or place of public resort, and every building in which twenty or more persons are employed above the second story in a factory, workshop, or mercantile or other establishment, when the owner or agent of the owner of the buildings is notified in writing by the insurance commissioner or one of his deputies, shall be provided with proper ways of egress or other means of escape from fire sufficient for the use of all persons accommodated, assembled, employed, lodging or residing in such building or buildings, and such ways of egress and means of escape shall be kept free from obstructions, in good repair, and ready for use. Every room above the second story in any such building in which twenty or more persons are employed shall be provided with more than one way of egress by stairways on the inside or outside of the building. All doors in any building subject to the provisions of this article shall open outwardly, if the insurance commissioner or one of his deputies shall so direct in writing.

1909, c. 637, s. 5.

6086. Enforcement by insurance commissioner. The insurance commissioner is charged with the execution of this law, and he or the chief of the fire department is vested with all privileges, duties, and obligations placed upon them in this chapter, in regard to the inspection of buildings, for the purpose of enforcing the provisions of this article in regard to the buildings and requirements herein. Any owner or occupant of premises failing to comply with the provisions of this article, in accordance with the orders of the authorities above specified, shall be guilty of a misdemeanor and punished by a fine of not less than ten dollars nor more than fifty dollars for each day's neglect. If any owner or lessee of any building referred to in this article shall deem himself aggrieved by any ruling or order of any chief of fire department or local inspector, he may within twenty-four hours appeal to the insurance commissioner, and the cause of complaint shall at once be investigated by the direction of the commissioner, and unless by his authority the order or ruling is revoked it shall remain in full force and effect and be forthwith complied with by the owner or lessee.

1909, c. 637, s. 6.

CHAPTER 100

GENERAL ASSEMBLY

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ART. 1. APPORTIONMENT OF MEMBERS

6087. Senators. Until another apportionment of the state shall be had in accordance with the terms of the constitution and laws of North Carolina, the senate shall be composed of fifty members elected from districts constituted as follows:

First District—Camden, Chowan, Currituck, Gates, Hertford, Pasquotank, and Perquimans counties shall elect two senators.

Second District—Beaufort, Dare, Hyde, Martin, Pamlico, Tyrrell, and Washington shall elect two senators.

Third District—Bertie and Northampton shall elect one senator.

Fourth District—Halifax and Edgecombe shall elect two senators.

Fifth District—Pitt shall elect one senator.

Sixth District—Franklin, Nash, and Wilson shall elect two senators.

Seventh District—Carteret, Craven, Greene, Jones, Lenoir, and Onslow shall elect two senators.

Eighth District—Wayne shall elect one senator.

Ninth District—Duplin and Pender shall elect one senator.

Tenth District—Brunswick and New Hanover shall elect one senator.

Eleventh District—Bladen and Columbus counties shall elect one senator.

Twelfth District—Robeson shall elect one senator.

Thirteenth District—Cumberland and Hoke shall elect one senator.

Fourteenth District—Harnett, Johnston, Lee, and Sampson shall elect two senators.

Fifteenth District—Wake shall elect one senator.

Sixteenth District—Vance and Warren shall elect one senator.

Seventeenth District—Granville and Person shall elect one senator.

Eighteenth District—Alamance, Caswell, Durham, and Orange shall elect two senators.

Nineteenth District—Rockingham county shall elect one senator.

Twentieth District—Guilford shall elect one senator.

Twenty-first District—Chatham, Moore, Richmond, and Scotland shall elect two senators.

Twenty-second District—Montgomery and Randolph shall elect one senator.

Twenty-third District—Anson, Davidson, Stanly, and Union shall elect two senators.

Twenty-fourth District—Cabarrus and Mecklenburg shall elect two senators.

Twenty-fifth District—Rowan shall elect one senator.

Twenty-sixth District—Forsyth shall elect one senator.

Twenty-seventh District—Stokes and Surry shall elect one senator.

Twenty-eighth District—Davie, Wilkes, and Yadkin shall elect one senator.

Twenty-ninth District—Iredell shall elect one senator.

Thirtieth District—Catawba and Lincoln shall elect one senator.

Thirty-first District—Gaston shall elect one senator.

Thirty-second District—Cleveland, Henderson, Polk, and Rutherford shall elect two senators.

Thirty-third District—Alexander, Burke, Caldwell, and McDowell shall elect two senators.

Thirty-fourth District—Alleghany, Ashe, and Watauga shall elect one senator.

Thirty-fifth District—Avery, Madison, Mitchell, and Yancey shall elect one senator.

Thirty-sixth District—Buncombe shall elect one senator.

Thirty-seventh District—Haywood, Jackson, Transylvania, and Swain shall elect one senator.

Thirty-eighth District—Cherokee, Clay, Graham, and Macon shall elect one senator.

Rev., s. 4398; Code, s. 2844; 1911, c. 150.

6088. House of representatives. Until the general assembly shall make another apportionment as provided by the constitution and laws of North Carolina, the house of representatives shall be composed of members elected from the counties of the state in the following manner, to wit: The counties of Guilford, Mecklenburg, and Wake shall elect three members each; the counties of Buncombe, Durham, Forsyth, Gaston, Halifax, Iredell, Johnston, Nash, Pitt, Robeson, Rockingham, Rowan, Union, and Wayne shall elect two members each; and the counties of Alamance, Alexander, Alleghany, Anson, Ashe, Avery, Beaufort, Bertie, Bladen, Brunswick, Burke, Cabarrus, Caldwell, Camden, Carteret, Caswell, Catawba, Chatham, Cherokee, Chowan, Cleveland, Clay, Columbus, Craven, Cumberland, Currituck, Dare, Davidson, Davie, Duplin, Edgecombe, Franklin, Gates, Graham, Granville, Greene, Harnett, Haywood, Henderson, Hertford, Hoke, Hyde, Jackson, Jones, Lee, Lenoir, Lincoln, Macon, Madison, Martin, McDowell, Mitchell, Montgomery, Moore, New Hanover, Northampton, Onslow, Orange, Pamlico, Pasquotank, Pender, Perquimans, Person, Polk, Randolph, Richmond, Rutherford, Sampson, Scotland, Stanly, Stokes, Surry, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Watauga, Wilkes, Wilson, Yadkin, and Yancey shall elect one member each.

Rev., s. 4399; Code, s. 2845; 1911, c. 151.

ART. 2. DUTY AND PRIVILEGE OF MEMBERS

6089. Presiding officers may administer oaths. The president of the senate is authorized to administer oaths for the qualification of senators and officers of the senate, and the speaker of the house of representatives is authorized to administer oaths for the qualification of all officers of the house and all members who shall appear after the election of speaker.

Rev., s. 4400; Code, s. 2855; 1883, c. 19.

6090. Members to convene at appointed time and place. Every person elected to represent any county or district in the general assembly shall appear at such time and place as may be appointed for the meeting thereof, on the first day, and attend to the public business as occasion shall require.

Rev., s. 4401; Code, s. 2847; R. C., c. 52, s. 27; 1787, c. 277, s. 1.

6091. Penalty for failure to discharge duty. If any member shall fail to appear, or shall neglect to attend to the duties of his office, he shall forfeit and pay for not appearing ten dollars, and two dollars for every day he may be absent from his duties during the session, to be deducted from his pay as a member; but a majority of the members of either house of the general assembly may remit such fines and forfeitures, or any part thereof, where it shall appear that such member has been prevented from attending to his duties by sickness or other sufficient cause.

Rev., s. 4402; Code, s. 2848; R. C., c. 52, s. 28; 1787; c. 277, s. 2.

6092. Expulsion for corrupt practices in election. If any person elected a member of the general assembly shall, by himself or any other person, directly or indirectly, give, or cause to be given, any money, property, reward or present whatsoever, or give, or cause to be given by himself or another, any treat or entertainment of meat or drink, at any public meeting or collection of the people, to any person for his vote or to influence him in his election, such person shall, on due proof, be expelled from his seat in the general assembly.

Rev., s. 4403; Code, s. 2846; R. C., c. 52, s. 24; 1801, c. 580, s. 2.

6093. Freedom of speech; protection from arrest. The members shall have freedom of speech and debate in the general assembly, and shall not be liable to impeachment or question, in any court or place out of the general assembly, for words therein spoken; and shall be protected, except in cases of crime, from all arrest and imprisonment, or attachment of property, during the time of their going to, coming from, or attending the general assembly.

Rev., s. 4404; Code, s. 2849; R. C., c. 52, s. 29; 1787, c. 277, s. 3.

6094. Monuments for deceased members. The governor shall have placed at the grave of any member of the general assembly, who may be interred at the city of Raleigh (whose remains are not intended to be removed by his friends), suitable grave-stones, containing the name of the deceased, his age, and the county he represented; and the cost thereof shall be paid by the treasurer, on the warrant of the auditor.

Rev., s. 4405; Code, s. 2874; R. C., 1844, c. 52, s. 39; 1883, c. 71.

ART. 3. CONTESTS

6095. Notice of contest. No person shall be allowed to contest the seat of any member of the general assembly unless he shall have given to the member thirty days notice thereof in writing, prior to the meeting of the general assembly, which must state the particular grounds of such contest. If the seat is contested on account of the reception of illegal votes, the notice must set forth the number of such votes, by whom given, and the supposed disqualifications; and if the same is contested on account of the rejection of legal votes, the notice must give the names of the persons whose votes were rejected. No evidence shall be admitted to show that the contestant received illegal votes, unless he shall also have been notified the same number of days, and in the same manner. The same notice of time and place required in taking depositions shall be required and proved on the investigation.

Rev., s. 4406; Code, s. 2850; 1893, c. 192; R. C., c. 52, s. 31; 1796, c. 466, s. 1.

6096. Depositions taken; penalty and privilege of witnesses. Any justice of the peace, or any person duly authorized to take depositions to be read before courts, may take depositions to be used on the investigation, and may issue subpoenas for witnesses, which shall be executed by any officer authorized to execute process. And if any witness shall fail to appear and give his deposition according to the subpoena, he shall forfeit and pay to the party causing him to be summoned, forty dollars. And on such investigation no witness in this or in the case of any other contested election shall be excused from discovering whether he voted at such election, or his qualification to vote, except as to his conviction

for any offense which would disqualify him. And if he was not a qualified voter, he shall be compelled to discover for whom he voted; but any witness making such discovery shall not be subject to criminal or penal prosecution for having voted at such election.

Rev., s. 4407; Code, s. 2851; R. C., c. 52, s. 32; 1800, c. 557, s. 1; 1868-9, c. 270, s. 12.

ART. 4. REPORTS OF OFFICERS TO GENERAL ASSEMBLY

6097. Treasurer's estimate of expenses and rate of taxation. It shall be the duty of the state treasurer to furnish the general assembly, at the commencement of each session, with estimates of the expenses of the state government and the rates of taxation necessary to pay the same for the two years next succeeding the close of the last fiscal year, and with a scheme in the form of a complete revenue bill to sustain such estimates.

Rev., s. 4408; Code, s. 2864; 1856-7, c. 30; 1883, c. 60, s. 3.

6098. State officers to furnish list of employees and salaries. The governor and all other state officers, the superintendents of the various state institutions, and the superintendents or heads of all institutions or departments of whatever kind that receive funds from the state, either directly or indirectly, shall furnish to each general assembly a full and complete list of the names of superintendents or heads of their respective departments, assistants, secretaries, clerks, laborers, and employees of whatever kind, together with the annual or monthly salaries of each, and of any and all compensation of any kind that they may receive. Any state officer, superintendent, head of department or institution, who shall fail or refuse to furnish a full and complete list to the general assembly within ten days after the assembling of the same, shall forfeit and pay to the treasurer of the state the sum of twenty-five dollars for each day of delay in excess of ten days, recoverable by motion in the superior court of Wake county or before a justice of the peace, after twenty days notice to such defaulting officer.

Rev., s. 4409; 1893, c. 424.

6099. Reports from state institutions and departments. It shall be the duty of the chief officer of each department of the state and of the boards of directors of all institutions supported in whole or in part by appropriations from the state, to submit to the general assembly, with their respective reports, bills providing for the support and management of their respective departments; these reports, with those of the other officers of the executive department, shall be submitted to the governor, to be transmitted by him with his message to the general assembly.

Rev., s. 4410; Code, s. 2865; 1800, c. 557, s. 2.

NOTE.—For bills of maintenance, see budget commission.

ART. 5. INVESTIGATING COMMITTEES

6100. Power of committees. Any committee of investigation raised either by joint resolution or resolution of either house of the general assembly has full power to send for persons and papers, and, if necessary, to compel attendance and production of papers by attachment or otherwise.

Rev., s. 4412; Code, s. 2853; 1868-9, c. 50, s. 1.

In the absence of express enactment otherwise, the existence of a legislative committee necessarily determines upon the adjournment of the body to which it belongs: *Bank v. Worth*, 117-146—and the per diem of its members ceases, *Ibid*.

By joint resolution (Acts 1895, page 502) general assembly appointed a committee, from its own body, to investigate certain facts and report to general assembly before its adjournment, if possible to do so; otherwise to report to the supreme court: Held, that such committee was not authorized to do any act after adjournment of general assembly except to make report: *Ibid*.

Legislative committee appointed to investigate certain facts and report to general assembly is not authorized to employ counsel under a provision for payment of necessary expenses: *Purnell v. Worth*, 117-157.

6101. Chairman may administer oaths. The chairman of any committee or any person in his presence, and under his direction, shall have power and authority to administer oaths.

Rev., s. 4413; Code, s. 2856; 1869-70, c. 5, s. 3.

6102. Pay of witnesses. Any witness appearing and giving testimony shall be entitled to receive from the person at whose instance he was summoned ten cents for every mile traveling to and from his residence, and ferriage, to be recovered before any justice of the peace upon the certificate of the commissioner.

Rev., s. 4414; Code, s. 2860; R. C., c. 52, s. 33; 1800, c. 557, s. 2.

6103. Appearance before committee. Every person desiring to appear either in person or by attorney to introduce testimony, or to offer argument for or against the passage of an act or resolution, before any committee of either house of the general assembly, shall first make application to such committee, stating in writing his object, the number and names of his witnesses, and the nature of their testimony. If the committee consider the information likely to be important, or the interest of the applicant to be great, they shall appoint a time and place for hearing the same, with such limitations as may be deemed necessary.

Rev., s. 4415; Code, s. 2858; 1868-9, c. 270, s. 10.

6104. Appeal from denial of right to be heard. If any committee shall refuse to grant the request of any citizen to be heard before it in a matter touching his interests, he may appeal to the house of which the committee is a part; and if he show good reason for his request the house shall order it to be granted.

Rev., s. 4416; Code, s. 2859; 1868-9, c. 270, s. 11.

ART. 6. ACTS AND JOURNALS

6105. When acts take effect. Acts of the general assembly shall be in force only from and after thirty days after the adjournment of the session in which they shall have passed, unless the commencement of the operation thereof be expressly otherwise directed.

Rev., s. 4417; Code, s. 2862; R. C., c. 52, s. 35; 1799, c. 527; 1868-9, c. 270, s. 1.

An act of the general assembly which provides that it shall be in force from and after its passage is in force and takes effect from the first day of the session at which it was passed: *Hamlet v. Taylor*, 50-36.

6106. Notice given of private acts. Any person who may desire the passage of a private law shall give notice of his intention to make application by advertise-

ment in some newspaper of the state which circulates in the county where the applicant resides, or in which such private law will operate, or by advertisement at the door of the courthouse and three other public places in such county for at least thirty days before the application; and when any private bill shall be introduced, a copy of such advertisement, with due proof of its having been so published, shall be produced before the second reading thereof.

Rev., s. 4418; Const., Art. II, s. 12; Code, s. 2861; R. C., c. 52, s. 34; 1796, c. 466, s. 2; 1835, c. 15.

Probably, if it appeared either from act itself or affirmatively from journals of legislature, which would have been competent evidence in court below, that such notice had not been given, this court would hold act unconstitutional; if legislative journal is silent as to the fact, the presumption would be that legislature obeyed constitution: *Gatlin v. Tarboro*, 78-119; *Cox v. Comrs.*, 146-584.

Courts will conclusively presume, from the ratification of a legislative private act, that the notice of thirty days was given: *Cox v. Comrs.*, 146-584, and cases cited; *Power Co. v. Power Co.*, 175-668.

6107. Bills to pay teachers' salaries. No bill for the payment of any claim for teachers' salaries shall be introduced in either house of the general assembly unless the claim shall have been approved by the chairman of the county board of education and by the county superintendent, and unless a certificate from the county superintendent stating that the debt was contracted by unavoidable mistake on the part of the teacher and the school committee shall be attached to and accompany the bill when introduced.

Rev., s. 4419; 1903, c. 435, s. 16.

6108. Enrollment of acts. All bills passed by the general assembly shall be enrolled for ratification under the supervision and direction of the secretary of state. All bills so enrolled shall be typewritten, or written with pen and ink, in the discretion of the secretary of state. The secretary of state is authorized to rent a sufficient number of typewriters, and employ a sufficient number of copyists, for the purpose of doing this work. He is further authorized to appoint one chief clerk and such assistants as may be necessary to supervise the enrollment of all bills and resolutions.

Rev., s. 4422; 1903, c. 5.

6109. Secretary of state to prepare index to acts. The secretary of state shall biennially, at the beginning of each regular session of the general assembly, appoint an assistant, whose duties it shall be to prepare for publication the indexes, side or marginal notes, and captions to the acts and resolutions, both public and private, ratified by the general assembly.

Rev., s. 4423; 1903, c. 3.

6110. Secretary of state to publish captions of acts. The secretary of state, with the aid of his assistant, shall, immediately upon the adjournment of any regular session of the general assembly, publish two thousand copies of captions of all the acts and resolutions ratified at such session and distribute the same among the members of such body.

Rev., s. 4424; 1903, c. 3, s. 2; 1911, c. 211, s. 3.

6111. Secretary of state to have laws printed. The secretary of state, within thirty days after the termination of each session of the general assembly, shall cause to be published by the state printer all the laws and joint resolutions passed at such session; and each volume shall contain his certificate that it was printed under his direction from enrolled copies on file in his office. In the printing he shall omit the certificate required to be indorsed upon the original bills; but he shall insert immediately after the title of each law the word “ratified,” adding the day, month, and year.

Rev., s. 4425; Code, s. 2869; 1868-9, c. 270, s. 14.

Mandamus will not issue to compel the secretary of state to exclude from the printed statutes a bill signed by the presiding officers of both houses, upon the allegation that it had not been passed after the required readings in each house: Carr v. Coke, 116-223.

6112. Journals indexed by clerks. The principal clerks of the two houses of the general assembly shall provide full and complete indexes for the journals of their respective houses.

Rev., s. 4421; Code, s. 2868; 1866-7, c. 71; 1881, c. 292.

6113. Journals deposited with secretary of state. The principal clerks of the senate and house of representatives, as soon as may be practicable after the close of each session, shall deposit in the office of the secretary of state the journals of the general assembly; and the secretary of state shall make and certify copies of any part or entry of the journals, and may take for the copy of each entry made and certified the same fee as for the copy of a grant.

Rev., s. 4420; Code, s. 2867; R. C., c. 52, s. 36; 1819, c. 1020.

See section 1779. The journals of the general assembly are conclusive evidence as to the passage of an act, and cannot be contradicted by entries made on an original bill: Comrs. v. Packing Co., 135-62—competent evidence only for the purpose of ascertaining whether a law had been passed in accordance with the constitution, article 2, section 14, requiring it to be read three times on three different days in each house and the yeas and nays to be entered on the second and third readings: Wilson v. Markley, 133-616; see, also, Cox v. Comrs., 146-584; Comrs. v. Trust Co., 143-110; Comrs. v. Snuggs, 121-394; Bank v. Comrs., 119-214.

Journals of the general assembly, when competent as evidence, import absolute verity, and cannot be explained or altered by parol evidence: Comrs. v. Trust Co., 143-110.

Copy of the journal of the legislature deposited with the secretary of state is not evidence for any purpose, and a misnomer of a town in a private act therein does not affect the validity of the act: Ibid.

Where title to office depends upon passage of bill acted upon by legislature, but not evidenced by ratification and signatures of presiding officers of two houses and by deposit in the office of secretary of state, the records or minutes of proceedings of the two houses may be resorted to for proof of their action: Stanford v. Ellington, 117-158.

Where it appeared from roll call of house of representatives that a quorum was present upon its assembling on a certain day, but upon a roll call on an election of an officer and before any record of adjournment appeared, a less number than a quorum voted, it will not be presumed that a quorum was present at such election: Ibid.

ART. 7. EMPLOYEES

6114. Principal clerk; term of office; duties. The principal clerk of each house of the general assembly shall hold his office for the term of two years, or until another is appointed; shall be present at such time and place as may be fixed

for the meeting of the general assembly, and on the first day thereof, and perform the duties of his office.

Rev., s. 4426; Code, s. 2870; R. C., c. 52, s. 37; 1846, c. 63.

6115. Temporary doorkeepers appointed. The keeper of the capitol (and if there be none, then the secretary of state) shall employ two suitable persons to place the two halls of the general assembly in order and wait upon the members, until doorkeepers can be regularly appointed.

Rev., s. 4427; Code, s. 2871; R. C., c. 52, s. 38; 1846, c. 63, s. 5.

6116. Doorkeeper's term of office. The term of office of the doorkeeper of each house shall be two years, or until his successor is appointed.

Rev., s. 4428; Code, s. 2863; 1868-9, c. 270, s. 7.

CHAPTER 101

GEOLOGICAL SURVEY AND FORESTS

ART. 1. ORGANIZATION AND GENERAL PURPOSES.

- 6117. State geologist appointed.
- 6118. Geological board appointed; meetings.
- 6119. Experts and assistants employed.
- 6120. Compensation of board, geologist, and assistants.
- 6121. Objects of the survey.
- 6122. Reports and printing.

ART. 2. ROAD BUILDING AND DEVELOPMENT OF MINERAL RESOURCES.

- 6123. Geological board to investigate and advise.

ART. 3. STATE FORESTS BY DONATION OR PURCHASE.

- 6124. Power to acquire land as state forest.
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- 6126. Legislative authority necessary for payment.

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- 6127. Governor may designate state forests.
- 6128. Publication of declaration.
- 6129. Duty of the landowners.
- 6130. State forest wardens appointed.
- 6131. Powers of state forest wardens.
- 6132. Fines imposed.

ART. 5. PROTECTION AGAINST FOREST FIRES.

- 6133. Power in geological board.
- 6134. State forester and forest wardens.
- 6135. Duties of state forester.
- 6136. Duties of forest wardens.
- 6137. Powers of forest wardens to prevent and extinguish fires.
- 6138. Compensation of forest wardens.
- 6139. Woodland defined.
- 6140. Misdemeanor to destroy posted forestry notice.

ART. 1. ORGANIZATION AND GENERAL PURPOSES

6117. State geologist appointed by governor. The governor shall appoint a suitable person as state geologist to conduct, under the supervision of a board of managers to be known as the geological board, a geological and economic survey of the state.

Rev., s. 4429; 1905, c. 542.

6118. Geological board appointed; meetings. The geological board shall consist of the governor (as chairman), four citizens of the state, two for a period of two years and two for a period of four years from March first, nineteen hundred and five, the same to be appointed by the governor by and with the advice and consent of the senate, and their successors to be in like manner appointed each for a period of four years. In case of the death or resignation of either of said citizens his successor shall be appointed by the governor. The geological board shall meet twice each year, once in January and once in June, in the city of Raleigh, on the

call of the governor, except that the board may change the time and place of meeting as circumstances may require.

Rev., s. 4430; 1905, c. 542, s. 2.

6119. Experts and assistants employed. The state geologist shall appoint, subject to the approval of the geological board, such experts and assistants as may be found necessary to enable him to carry out successfully and speedily the work of the survey.

Rev., s. 4431; 1905, c. 542, s. 3.

6120. Compensation of board, geologist and assistants. In attending its meetings the members of the geological board shall be reimbursed the amount of their actual traveling expenses, and members not otherwise receiving a salary from the state may in addition be paid a per diem of four dollars for not exceeding eight days during any one year. The compensation of the state geologist and the experts and assistants shall be fixed by the geological board.

Rev., s. 2757; 1905, c. 542, ss. 2, 3.

6121. Objects of the survey. The survey shall have for its objects:

1. An examination of the mineral, forest, fishery, and other material resources of the state.

2. An examination of the geological formations of the state with reference to their economic products.

3. An examination of the road-building materials and the best methods of utilizing the same.

4. An examination and classification of the soils, the forests, and other physical features of the state, with special reference to their bearing upon the occupation of the people.

5. An examination of the streams and waterpowers of the state, with special reference to the development for manufacturing enterprises and the preservation of the sources of these streams through the protection of the forests.

6. The consideration of such other scientific and economic problems as in the judgment of the geological board shall be deemed of value to the people of the state.

7. The preparation of such reports, illustrations, and maps as may be deemed necessary in placing the results of these investigations before the public.

8. And the state geologist, with the approval of the geological board, is hereby authorized to arrange for and accept such aid and coöperation from the several United States government bureaus and other sources as may assist in completing the topographic surveys of the state and in carrying out other provisions of this chapter.

9. An examination of the water supplies of the state, with special reference to the sinking of deep or artesian wells.

Rev., s. 4432; 1905, c. 542, s. 4.

6122. Reports and printing. The geological board shall cause to be prepared and submitted to each legislature a report showing the progress and expenditures of the survey; it shall also cause to be prepared for publication such other reports with necessary illustrations and maps as will adequately set forth the geology

and material resources of the state, all such reports, illustrations, and maps to be printed and distributed as the geological board may direct in editions of three thousand copies each at the expense of the state as other public documents: Provided, however, that not more than five thousand dollars shall be used for this purpose in any biennial period.

Rev., s. 4433; 1905, c. 542, s. 5; 1911, c. 211.

ART. 2. ROAD BUILDING AND DEVELOPMENT OF MINERAL RESOURCES

6123. Geological board to investigate and advise. It shall be the duty of the geological board to investigate the location, occurrence, and development of mineral properties and to advise with the township and county authorities in the building and improvement of the public roads, by sending to the township or county a competent road engineer, who will assist them in locating their improved roads, advise them as to the best road to build and how to build it, and also give advice relating to the best kind of bridge to be built in connection with the improvement of any road. The geological board, through the state geologist, may make inquiries in regard to systems of road-building and management throughout the United States, and make investigations and experiments in regard to the best methods of road-making and the best kinds of road material, and shall disseminate such knowledge by lectures to be given in the different counties, and by preparing, publishing, and distributing bulletins and reports on the subject of road improvement, and shall also gather and tabulate information and statistics on road-building in North Carolina and disseminate the same throughout the state.

1909, c. 915, s. 2; 1917, c. 65.

ART. 3. STATE FORESTS BY DONATION OR PURCHASE

6124. Power to acquire land as state forest. The governor of the state is authorized upon recommendation of the geological board to accept gifts of land to the state, the same to be held, protected, and administered by said board as state forests, and to be used so as to demonstrate the practical utility of timber culture and water conservation, and as refuges for game. Such gifts must be absolute except in such cases as where the mineral interest on the land has previously been sold. The state geological board shall have the power to purchase lands in the name of the state, suitable chiefly for the production of timber, as state forests, for experimental, demonstration, educational, park, and protection purposes, using for such purposes any special appropriations or funds available. The attorney-general of the state is directed to see that all deeds to the state for land mentioned in this section are properly executed before the gift is accepted or payment of the purchase money is made. Such state forests shall be subject to county taxes assessed on the same basis as are private lands, to be paid out of money in the state treasury not otherwise appropriated.

1915, c. 253, s. 1.

6125. Application of proceeds from sale of products. All money received from the sale of wood, timber, minerals, or other products from the state forests shall be paid into the state treasury and to the credit of the geological board; and

such money shall be expended in carrying out the purposes of this article and of forestry in general, under the direction of the geological board.

1915, c. 253, s. 2.

6126. Legislative authority necessary for payment. Nothing in this article shall operate or be construed as authority for the payment of any money out of the state treasury for the purchase of lands or for other purposes unless by appropriation for said purpose by the general assembly.

1915, c. 253, s. 2½.

ART. 4. PRIVATE LANDS DESIGNATED AS STATE FORESTS

6127. Governor may designate state forests. The governor of the state, upon the written application of any owner or owners of wooded lands situated in North Carolina above contour line two thousand feet, may at his discretion declare the lands of such owner or owners, or such parts thereof as he may deem advisable, a "state forest of North Carolina."

1909, c. 89, s. 1.

6128. Publication of declaration. The declaration of the governor shall be published, at the expense of the applicant, in three consecutive issues of any newspaper published in the county or counties wherein the lands declared a state forest reserve are situated, if there be one; if no paper is published in the county or counties, then in a paper published in an adjoining county; and after such publication the said lands shall be a state forest of North Carolina for the term of thirty years.

1909, c. 89, s. 2.

6129. Duty of the landowners. The owner or owners, when making such written application, shall agree in writing to treat in a conservative manner the proposed state forest described in the application, such manner to be in accordance with a working plan approved by the North Carolina geological and economic survey; and the owner or owners of such proposed state forest, when making such application, shall agree to pay annually into the school fund of the county wherein such proposed state forest or a part thereof is situated one-half cent for every acre of such proposed state forest situated within the county; and if the owner or owners thereafter shall fail to make such annual payment, then the declaration of the governor establishing the said state forest shall be null and void to all intents and purposes.

1909, c. 89, s. 3.

6130. State forest wardens appointed. The governor shall appoint at his discretion, with the approval of the commissioners of the county wherein a state forest is situated, as state forest wardens such a man or men over twenty-one years of age as may be designated for appointment by the owner or owners of such state forest. Such state forest wardens are to receive no compensation other than that which the owner or owners of the state forest may pay to them.

1909, c. 89, s. 4.

6131. Powers of state forest wardens. The state forest wardens may make arrest on sight, without warrant, for any criminal offense, as provided in the chapter on Crimes, for setting fire to woods, for camp-fires, for hunting on lands without permission of the owner, for malicious injury to real property, for cutting or removing timber from the land of another, for trespass on land after being forbidden, or for other crime relating to real estate committed within the state forest. They shall safeguard against trespass, and notably against fire, the state forest for which they have been appointed; and, as far as the enforcement of the provisions of this article is concerned, the state forest warden shall have all the powers, privileges, and protection otherwise had by sheriffs under any law now in force.

1909, c. 89, s. 5.

6132. Fines imposed. The minimum fine for any offense mentioned in the preceding section committed within any state forest shall be fifty dollars if within the jurisdiction of the superior court, and twenty-five dollars if within the jurisdiction of a justice of the peace.

1909, c. 89, s. 6.

ART. 5. PROTECTION AGAINST FOREST FIRES

6133. Power in geological board. The state geological board may take such action as it may deem necessary to provide for the prevention and control of forest fires in any and all parts of this state, and it is hereby authorized to enter into an agreement with the secretary of agriculture of the United States for the protection of the forested watersheds of streams in this state.

1915, c. 243, s. 1.

6134. State forester and forest wardens. The forester of the state geological and economic survey, who shall be called state forester, and shall be ex officio state forest warden, may appoint, with the approval of the geological board, one township forest warden and one or more district forest wardens in each township of the state in which the amount of forest land and the risks from forest fires shall, in his judgment, make it advisable and necessary.

1915, c. 243, s. 2.

6135. Duties of state forester. The state forester, as the state forest warden, shall have supervision of township and district forest wardens, shall instruct them in their duties, issue such regulations and instructions to the township and district forest wardens as he may deem necessary for the purposes of this article, and cause violations of the laws regarding forest fires to be prosecuted.

1915, c. 243, s. 3.

6136. Duties of forest wardens. Forest wardens shall have charge of measures for controlling forest fires; shall make arrests for violation of forest laws; shall post along highways and in other conspicuous places copies of the forest fire laws and warnings against fires, which shall be supplied by the state forester; shall patrol during dry and dangerous seasons under the direction of the state

forester, and shall perform such other acts and duties as shall be considered necessary by the state forester for the protection of the forests from fire. The township forest warden of the township in which a fire occurs shall within ten days make such a report thereof to the state forester as may be prescribed by him. Each district forest warden shall promptly report to township wardens any fire in his district.

1915, c. 243, s. 4.

6137. Powers of forest wardens to prevent and extinguish fires. Forest wardens shall prevent and extinguish forest fires in their respective townships and enforce all statutes of this state now in force or that hereafter may be enacted for the protection of forests and woodlands from fire, and they shall have control and direction of all persons and apparatus while engaged in extinguishing forest fires. Any forest warden may arrest, without a warrant, any person or persons taken by him in the act of violating any of the laws for the protection of forests and woodlands, and bring such person or persons forthwith before a justice of the peace or other officer having jurisdiction, who shall proceed without delay to hear, try, and determine the matter. During a season of drouth the state forester may establish a fire patrol in any township, and in case of fire in or threatening any forest or woodland the township or district forest warden shall attend forthwith and use all necessary means to confine and extinguish such fire. The forest warden may summon any male resident of the township between the ages of eighteen and forty-five years to assist in extinguishing fires, and may require the use of horses and other property needed for such purpose; any person so summoned, and who is physically able, who refuses or neglects to assist or to allow the use of horses, wagons, or other material required, shall be liable to a penalty of not less than five dollars nor more than fifty dollars. No action for trespass shall lie against any forest warden or person summoned by him for crossing or working upon lands of another in connection with his duties as forest warden.

1915, c. 243, s. 6.

6138. Compensation of forest wardens. Forest wardens shall receive compensation from the geological board at a rate of not to exceed twenty cents per hour for the time actually engaged in the performance of their duties; and reasonable expenses for equipment, transportation, or food supplies incurred in fighting or extinguishing any fire, according to an itemized statement to be rendered the state forester every month, and approved by him. Forest wardens shall render to the state forester a statement of the services rendered by the men employed by them or their district wardens, as provided in this article, within one month of the date of service, which bill shall show in detail the amount and character of the service performed, the exact duration thereof, the name of each person employed, and any other information required by the state forester. All accounts of the forest wardens must be duly sworn to before a justice of the peace, notary public, or other officer qualified to witness such papers within the county in which the expenses were incurred. If said bill be duly approved by the state forester, it shall be paid by direction of the geological board out of any funds provided for that purpose.

1915, c. 243, s. 7.

6139. Woodland defined. For the purposes of this article, woodland is taken to include all forest areas, both timber and cut-over land, and all second-growth stands on areas that have at one time been cultivated.

1915, c. 243, s. 11.

6140. Misdemeanor to destroy posted forestry notice. Any person who shall maliciously or wilfully destroy, deface, remove, or disfigure any sign, poster, or warning notice, posted by order of the state forester, under the provisions of this article, or any other act which may be passed for the purpose of protecting the forests in this state from fire, shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine of not less than ten dollars nor more than fifty dollars, or imprisoned not exceeding thirty days.

1915, c. 243, s. 5.

NOTE.—For crimes resulting from fires escaping in woodlands, etc., or from negligence as to camp-fires, etc., see Crimes and Punishments, secs. 4309-4312.

CHAPTER 102

HISTORICAL COMMISSION

ART. 1. CREATION AND GENERAL POWERS.

- 6141. Appointment; term of office; compensation.
- 6142. Duties of commission.
- 6143. Powers of commission.
- 6144. Office provided.
- 6145. Preservation of documents; copies furnished.
- 6146. Appropriation for maintenance.

ART. 2. LEGISLATIVE REFERENCE LIBRARY.

- 6147. Appointment and duties of librarian.
- 6148. Reports and publications for exchange.
- 6149. Reports and bulletins printed.
- 6150. Appropriation for maintenance.

ART. 1. CREATION AND GENERAL POWERS

6141. Appointment; term of office; compensation. The historical commission shall consist of not more than five persons, of whom three shall constitute a quorum. They shall be appointed by the governor on the first day of April, one thousand nine hundred and seven, who shall designate one member to serve for a term of two years, two members to serve for a term of four years, and two members to serve for a term of six years from the date of their appointments, and their successors shall be appointed by the governor and shall serve for a term of six years and until their successors are appointed and qualified. In case of a vacancy in any of the above terms the persons appointed to fill such vacancies shall be appointed only for the unexpired term. They shall serve without salary, but shall be allowed their actual expenses when attending to their official duties, to be paid out of any funds hereinafter appropriated for the maintenance of the commission: Provided, that such expenses shall not be allowed for more than four meetings annually nor for more than four days at each meeting.

Rev., s. 4539; 1903, c. 767, s. 2; 1907, c. 714, s. 1.

6142. Duties of commission. It is the duty of the commission to have collected from the files of old newspapers, court records, church records, private collections, and elsewhere, historical data pertaining to the history of North Carolina and the territory included therein from the earliest times; to have such material properly edited, published by the state printer as other state printing, and distributed under the direction of the commission; to care for the proper marking and preservation of battle-fields, houses, and other places celebrated in the history of the state; to diffuse knowledge in reference to the history and resources of North Carolina; to encourage the study of North Carolina history in the schools of the state, and to stimulate and encourage historical investigation and research among the people of the state; to make a biennial report of its receipts and disbursements, its work and needs, to the governor, to be by him transmitted to the general assembly: Provided, that not more than five thousand dollars shall be expended for this purpose in any biennial period.

Rev., ss. 4540, 4541; 1907, c. 714, s. 2; 1911, c. 211, s. 6.

NOTE.—For provision for marking places of historical interest, see 1917, c. 277; 1919, c. 146.

6143. Powers of commission. The commission shall have power to adopt a seal for use and official business; to adopt rules for its own government not inconsistent with the provisions of this chapter; to fix a reasonable price for its publications and to devote the revenue arising from such sales to extending the work of the commission; to employ a secretary; to control the expenditure of such funds as may be appropriated for its maintenance: Provided, that at least one copy of its publications shall be furnished free of charge to any public school library or public library in North Carolina, state officers, and members of the general assembly making application for the same through its properly constituted authorities.

1907, c. 714, s. 3.

6144. Office provided. The second floor of the state administration building shall be occupied by the North Carolina historical commission.

1913, c. 99, s. 1.

6145. Preservation of documents; copies furnished. Any state, county, town, or other public official in custody of public documents is hereby authorized and empowered in his discretion to turn over to the commission for preservation any official books, records, documents, original papers, newspaper files, printed books or portraits, not in current use in his office, and the commission shall provide for their permanent preservation, and when so surrendered copies therefrom shall be made and certified under the seal of the commission upon application of any person, which certification shall have the same force and effect as if made by the officer originally in charge of them, and the commission shall charge for such copies the same fees as such officer is by law allowed to charge, to be collected in advance.

1907, c. 714, s. 5.

6146. Appropriation for maintenance. For carrying out the purposes and objects of this article the sum of ten thousand dollars, or so much thereof as shall be needed over and above all of the funds derived from the sale of the publications of the commission, and all of the fees collected under the preceding section, is hereby annually appropriated out of funds in the hands of the state treasurer not otherwise appropriated, and upon order of the commission the state auditor is hereby empowered and directed to draw his warrant for this sum upon the state treasurer.

1907, c. 714, s. 6; 1913, c. 146; 1917, c. 261, s. 1; 1919, c. 144, s. 1.

ART. 2. LEGISLATIVE REFERENCE LIBRARY

6147. Appointment and duties of librarian. The North Carolina historical commission is authorized and required to appoint a properly qualified person to be known as a legislative reference librarian, whose duty it shall be to collect, tabulate, annotate, and digest information for the use of members and committees of the general assembly, and other officials of the state and of the various counties and cities included therein, upon all questions of state, county, and

municipal legislation; to make references and analytical comparisons of legislation upon similar questions in other states and nations; and to have at hand for the use of the members of the general assembly the laws of other states and nations as well as those of North Carolina, and such other books, papers, and articles as may throw light upon questions under consideration. It shall be his duty also to keep the compilations of the public laws of the state revised to date.

It shall also be the duty of the librarian to classify and arrange by proper indexes, so as to make them accessible, all public bills relating to the aforesaid matters heretofore introduced in the general assembly, and he shall perform such other duties as may be required of him by the North Carolina historical commission. He shall also, upon request by members of the general assembly, secure all available information on any particular subject named.

1915, c. 202, s. 1.

6148. Reports and publications for exchange. The several departments of the state government shall, upon request of the historical commission, supply the commission with such copies of their reports and other publications as may be necessary to effect exchanges with other states for their publications of a similar character, for use of the legislative reference library.

1915, c. 202, s. 2.

6149. Reports and bulletins printed. The reports, bulletins, and other publications of the legislative reference librarian shall be printed under the direction of the historical commission as other state printing.

1915, c. 202, s. 3.

6150. Appropriation for maintenance. For carrying out the purposes of this article the sum of six thousand dollars, or so much thereof as may be necessary, is hereby annually appropriated, to be expended under the direction of the historical commission.

1915, c. 202, s. 4; 1917, c. 261, s. 2

CHAPTER 103

HOSPITALS FOR THE INSANE

ART. 1. ORGANIZATION AND MANAGEMENT.

- 6151. Incorporation and names.
- 6152. Power to acquire and hold property.
- 6153. Division of territory; Goldsboro for colored insane.
- 6154. Cherokee indians of Robeson county and Croatan indians of other counties.
- 6155. Epileptics cared for at Raleigh.
- 6156. Board of directors; election and term of office.
- 6157. Members of board distributed; executive committee.
- 6158. Power of board of directors; compensation.
- 6159. Additional directors; executive committee for Caswell training school.
- 6160. A garden provided for the executive mansion.
- 6161. Meetings of directors.
- 6162. By-laws and rules made by directors.
- 6163. Transfer of patients from one hospital to another; transfer of funds.
- 6164. Board may make ordinances; penalties for violation.
- 6165. Executive committee appointed.
- 6166. State treasurer to act as treasurer; payment of funds.
- 6167. Application of funds belonging to hospitals.
- 6168. Board of charities and general assembly, visitors; superintendent reports; to whom.
- 6169. Fiscal year.
- 6170. Court may remit penalties given under this chapter.
- 6171. Assisting inmates to escape misdemeanor.

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- 6172. Directors and superintendent not personally liable.
- 6173. Superintendent; appointment, term of office, qualifications, and removal.
- 6174. Powers of superintendent.
- 6175. Superintendent to notify sheriff of escape.
- 6176. Assistant physicians; appointment and removal.
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- 6178. Steward to give bond.
- 6179. Salaries of employees fixed by directors.
- 6180. Directors to keep record of proceedings; clerk.
- 6181. Superintendent may appoint employees as policemen, who may arrest without warrant.
- 6182. Oath of special policeman.
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- 6184. Persons adjudged insane entitled to immediate admission.
- 6185. Idiots not admitted.
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- 6187. Only bona fide residents admitted to hospitals.
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- 6189. Settlement of patient determined.
- 6190. Affidavit of insanity to procure admission.
- 6191. Clerk to issue order for examination.
- 6192. Clerk and physician to make examination.
- 6193. Clerk may discharge person, require bond, or commit to hospital.
- 6194. Examination at home of patient.
- 6195. When justice of the peace may make examination.

- 6196. Questions to be answered and certified to superintendent.
- 6197. Clerk to keep record of examinations and discharges.
- 6198. Fees for examination.
- 6199. Superintendent of hospital notified; attendant to convey patient.
- 6200. Bill of expense sent to county commissioners.
- 6201. Failure of superintendent to send attendant; sheriff to act.
- 6202. Cost of conveying patients to and from hospital; how paid.
- 6203. Preparation of patient for admission to hospital.
- 6204. Commitment in case of sudden or violent insanity.
- 6205. Expense paid by county of settlement; penalty.
- 6206. Person conveying patient to hospital without authority.
- 6207. How admission determined, when superintendent is in doubt.
- 6208. Admission refused if patient exposed to contagious disease.
- 6209. Commitment upon patient's own application.
- 6210. Proceedings in case of insanity of citizen of another state.
- 6211. Proceedings in case of insanity of alien.
- 6212. Insane persons temporarily committed to jail.

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- 6213. County commissioners may discharge insane person in county.
- 6214. Discharge of patient from hospital; sheriff's duty; expense paid.
- 6215. Superintendent may discharge patient temporarily.
- 6216. Bonds for safe-keeping of insane persons; enforcement.
- 6217. Form of bond for safe-keeping of insane.
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- 6236. Insane persons charged with crime to be committed to hospital.
- 6237. Persons acquitted of certain crimes, or incapable of being tried, on account of insanity, committed to hospital.
- 6238. Convicts becoming insane committed to hospital.
- 6239. Persons acquitted of crime on account of insanity; how discharged from hospital.
- 6240. Proceedings in case of recovery of patient charged with crime.
- 6241. Ex-convicts with homicidal mania committed to hospital.
- 6242. Hospital authorities to receive and treat such patients.
- 6243. Annual appropriation for maintenance.

ART. 1. ORGANIZATION AND MANAGEMENT

6151. Incorporation and names. The hospital for the insane, located near Morganton, shall be and remain a corporation under this name: The State Hospital at Morganton. The hospital for the insane, located near Raleigh, shall be and remain a corporation under this name: The State Hospital at Raleigh. The hospital for the insane, located near Goldsboro, shall be and remain a corporation under this name: The State Hospital at Goldsboro. Under their respective names each corporation is invested with all the property and rights heretofore held by each, under whatsoever name called or incorporated, and all other corporate names are hereby abolished. Hereafter in this chapter, when the above names are used, they shall be deemed to relate back to and include the corporation under whatsoever name it might heretofore have had.

Rev., s. 4542; Code, ss. 2227, 2240; 1899, c. 1, s. 1.

Case of historical interest under office-holding cases: Wood v. Bellamy, 120-212.

6152. Power to acquire and hold property. The state hospital at Morganton, and the state hospital at Raleigh, and the state hospital at Goldsboro, may each acquire and hold, for the purpose of its institution, real and personal property, by devise, bequest, or by any manner of gift, purchase, or conveyance whatsoever.

Rev., s. 4543; 1899, c. 1, s. 2.

6153. Division of territory; Goldsboro for colored insane. The state hospital at Morganton and the state hospital at Raleigh shall be exclusively for the accommodation, maintenance, care and treatment of the white insane of this state, and the state hospital at Goldsboro shall be exclusively for the accommodation, maintenance, care and treatment of the colored insane and inebriates of this state. The line heretofore agreed upon by the directors of the state hospital at Morganton and the state hospital at Raleigh shall be the line of division between the territories of the said hospitals, and white insane persons and inebriates settled in counties west of said line shall be admitted only into the state hospital at Morganton, and white insane persons and inebriates settled in counties to the east of said line shall be admitted only into the state hospital at Raleigh. The board of directors hereinafter provided for may change said line from time to time whenever in their opinion such change may be proper, and they may transfer patients from one hospital to the other when such transfer may be deemed advantageous. That portion of the state which is or may hereafter be west of said division line shall be known as the western hospital district, and that portion of the state which is or may hereafter be east of said line shall be known as the eastern hospital district.

Rev., s. 4544; 1899, c. 1, ss. 3, 4; 1917, c. 150, s. 1.

6154. Cherokee indians of Robeson county and Croatan indians of other counties. All the insane and inebriate Cherokee indians of Robeson county, and all the insane and inebriate Croatan indians of the other counties of the state, shall be cared for in the hospital for the insane at Raleigh in wards separate and apart from the white patients in said hospital, and all such Cherokee indians of

Robeson county and Croatan indians of the other counties of the state shall be cared for and receive the same treatment as other patients in said hospital receive. 1919, c. 211.

6155. Epileptics cared for at Raleigh. Whenever it becomes necessary for any white person of this state, afflicted with the disease known as epilepsy, to be confined or to receive hospital treatment, such person shall be accommodated, maintained, cared for, and treated at the state hospital at Raleigh. Such epileptics shall be committed by the clerks of the superior courts of the several counties to the state hospital at Raleigh in the manner now provided by law for the commitment of insane persons to the several hospitals for the insane; and when such persons shall be committed it shall be the duty of the superintendent of the state hospital at Raleigh, and he is required, to receive such persons and care for, maintain, and treat them at the hospital at Raleigh, if the superintendent shall find such persons to be afflicted to such extent as properly to become a public charge: Provided, that any person so committed who is able to pay shall be charged actual cost of maintenance.

All epileptics confined, cared for, and maintained at the state hospital at Morganton shall be transferred to the state hospital at Raleigh.

1909, c. 910, ss. 1, 2.

6156. Board of directors; election and term of office. The corporations shall be under the management of a board of nine directors, no two of whom shall be resident of the same county, nominated by the governor and, by and with the advice and consent of a majority of the senators-elect, appointed by him, of whom five shall be a quorum, except when three of their number are in this chapter empowered to act for special purposes. Such board of directors shall be in classes of three and the term of office of such classes shall expire as follows: Those of the first class, on the first day of April, one thousand nine hundred and nineteen; of the second class, on the first day of April, one thousand nine hundred and twenty-one; and of the third class, on the first day of April, one thousand nine hundred and twenty-three. At the expiration of their respective terms of office all appointments shall be for a term of six years, except such as are made to fill unexpired terms.

Rev., s. 4547; 1899, c. 1, s. 5; 1901, c. 712; 1917, c. 150, s. 1.

Appointments are made by the governor by and with the consent of the senate; and when the governor appoints to fill a vacancy, the appointee holds only until the senate meets and acts upon the appointment: *Salisbury v. Croom*, 167-223.

NOTE.—For additional directors see sec. 5896, art. 12, chapter, Educational Institutions.

6157. Members of board distributed; executive committees. Three members of the board of directors shall be appointed from that portion of the state now served by the state hospital for the insane at Morganton, and they shall constitute the executive committee for said hospital. Three members of the board shall be appointed from that portion of the state served by the state hospital for the insane at Raleigh, and they shall constitute the executive committee for said hospital. The remaining three members of the board may be appointed from any part of the state, and they shall constitute the executive committee for the state

hospital for the insane at Goldsboro. Each of the executive committees herein named is hereby authorized and empowered to make such rules and regulations as may be necessary with respect to the receipts from pay patients and other cash sales of each institution, which sums shall belong to and be expended by the institutions collecting the same.

1917, c. 150, s. 1.

6158. Power of board of directors; compensation. The board of directors herein provided for shall direct and manage the affairs of the three institutions named in this chapter, and shall have power to receive, hold, manage, convey, or otherwise dispose of in the name of either institution all such property or estate as may hereafter be given or otherwise conveyed to either corporation. The members of such board shall be paid for their services the sum of four dollars per day and actual expenses while engaged in the discharge of their official duties.

Rev., s. 4549; 1899, c. 1, s. 7; 1917, c. 150, s. 1.

6159. Additional directors; executive committee for Caswell training school. The governor is authorized, by and with the consent of the senate, to appoint three additional directors on the board of directors for the hospitals for the insane, and the three so appointed shall serve as an executive committee for the Caswell training school, the management of which is hereby consolidated with the management of the hospitals for the insane. The three directors so appointed shall serve one for two years, one for four years, and one for six years.

1919, c. 295, ss. 1, 2.

6160. A garden provided for the executive mansion. The board of directors is authorized and directed to set apart two acres of land belonging to the state hospital at Raleigh to be used as a garden for the executive mansion. They are further authorized to have such garden cultivated, the actual expense of cultivation to be paid by the governor.

1917, c. 171.

6161. Meetings of directors. The board of directors shall convene at each of the several hospitals herein named during the month of April in each year, at a time to be fixed by such board and at such other times as they shall appoint, and investigate the administration of its affairs, and report on the same to the general assembly, with such remarks and recommendations as to them shall seem expedient.

Rev., s. 4550; 1899, c. 1, s. 8; 1917, c. 150, s. 1.

6162. By-laws and rules made by directors. The board of directors shall make all such by-laws and regulations for the government of these institutions as shall be necessary, among which regulations shall be such as shall make the institutions as nearly self-supporting as is consistent with the purpose of their creation.

Rev., s. 4551; 1899, c. 1, s. 14; 1917, c. 150, s. 1.

6163. Transfer of patients from one hospital to another; transfer of funds. The board of directors are authorized to make such rules and regulations as in

their discretion may seem best for the transfer of patients from one state hospital for the insane to another state hospital for the insane; and they are further authorized to transfer from one hospital for the insane to another hospital for the insane any funds appropriated for permanent improvement or maintenance if in their discretion and judgment it may become advisable or necessary.

1919, c. 330.

6164. Board may make ordinances; penalties for violation. Authority is hereby conferred upon the board of directors of the state hospitals for the insane and upon the board of directors and superintendent of the North Carolina school for the deaf to enact ordinances for the regulation and deportment of persons in the buildings and grounds of the institutions, and for the suppression of nuisances and disorder, and when adopted the ordinances shall be recorded in the proceedings of the said board and printed, and a copy posted at the entrance to the grounds, and not less than three copies posted at different places within the grounds, and when so adopted and printed, and posted up, the ordinances shall be binding upon all persons coming within the grounds. Such boards are empowered and directed to prescribe penalties for the violation of each section of the ordinances so adopted, and if any person violates a section of the ordinances, the penalty prescribed may be recovered in a civil action instituted in the name of the hospital against the person offending, before any justice of the peace in the county in which the hospital is situated, and the sum so recovered shall be used as the board of directors shall direct. Violation of any ordinances so made shall be a misdemeanor, punishable by fine not exceeding fifty dollars or imprisonment not exceeding thirty days.

Rev., ss. 3695, 4559; 1899, c. 1, s. 54; 1901, c. 627; 1915, c. 14, s. 2; 1917, c. 150, s. 1.

6165. Executive committee appointed. The board of directors shall, out of their number, appoint three members as an executive committee, who shall hold their respective offices as such for one year, and shall have such powers and be subject to such duties as the board of directors may delegate to them.

Rev., s. 4548; 1899, c. 1, s. 6; 1917, c. 150, s. 1.

6166. State treasurer to act as treasurer; payment of funds. The state treasurer shall be treasurer of said corporations. The state treasurer shall keep all accounts of the institutions, and shall pay out all moneys upon the warrant of the respective superintendents, countersigned by two members of the board of directors, under such rules and regulations as the board of directors may establish.

Rev., s. 4553; 1899, c. 1, s. 11; 1917, c. 150, s. 1.

NOTE.—The state treasurer is ex officio treasurer of this and other state institutions. See State Officers, sec. 7689.

6167. Application of funds belonging to hospitals. All moneys and proceeds of property given to any hospitals, and all moneys arising from the sale of any real estate which may be owned by such hospital, shall be paid into the state treasury, and all donations in which there shall be special directions for their application shall be kept as a distinct fund and faithfully applied, as the donor may have directed; and the same hospital shall be supported by appropriations

from the state treasury. But the proceeds arising from the sale of personal property belonging to a hospital, the board paid by private patients, rentals from real estate, and money from any other sources, except the sale of real estate, shall remain with the hospital and be used as the board of directors may determine. An account of the proceeds of all such income and its expenditure shall be carefully kept and published in the report to the general assembly.

Rev., s. 4552; 1899, c. 1, s. 34.

6168. Board of charities and general assembly, visitors; superintendent reports, to whom. The state board of charities and public welfare and the members of the general assembly shall be ex officio visitors of all hospitals for the insane. It shall be the duty of the state board of charities to visit the hospitals from time to time, as they may deem expedient, to examine into their condition, and make report thereon to the general assembly, with such suggestions and remarks as they may think proper.

Rev., s. 4554; 1899, c. 1, s. 37; 1917, c. 150, s. 1.

NOTE.—See Boards of Charities, art. 1.

6169. Fiscal year. The close of the fiscal year shall be the thirtieth day of November in each year, and all accounts and estimates shall be made with reference thereto.

Rev., s. 4558; 1899, c. 1, s. 38.

6170. Court may remit penalties given under this chapter. Whenever suit shall be brought against a sheriff or board of county commissioners for the recovery of a penalty prescribed for doing an act forbidden, or failure to do any act required by this chapter, the judge or justice of the peace before whom the action is tried may order so much of said penalty to be remitted as in his judgment should be remitted to meet the ends of justice, and he shall enter up judgment for the amount of the penalty, to be discharged by the payment of such a sum as he may think just, and the costs of the action. In fixing the amount to be remitted (if the judge or justice should think the remission of any part proper), he shall consider the costs and expenses that the plaintiff may have been put to, and he should also consider the conduct of the defendants; and there ought to be no remission when the act of the defendants is wanton or contumacious, or is grossly negligent.

Rev., s. 4557; 1899, c. 1, s. 57.

6171. Assisting inmates to escape misdemeanor. If any person shall assist any inmate of any state hospital to escape therefrom he shall be guilty of a misdemeanor.

Rev., s. 3694; 1899, c. 1, s. 53.

ART. 2. OFFICERS AND EMPLOYEES

6172. Directors and superintendent not personally liable. No director or superintendent of any state hospital shall be personally liable for any act or thing done under or in pursuance of any of the provisions of this chapter.

Rev., s. 4560; 1899, c. 1, s. 31.

The directors and superintendent are not personally liable in damages for discharging a patient who subsequently kills a third person: *Ballinger v. Rader*, 151-383.

6173. Superintendent; appointment, term of office, qualifications, and removal. The board of directors shall appoint a superintendent of each of said institutions and prescribe his duties. He shall be a skilled physician, educated to his profession, of good moral character, of prompt business habits, and of kindly disposition. He shall hold office for six years from and after his appointment, unless sooner removed by said board, who may, for infidelity to his trust, gross immorality, or incompetency to discharge the duties of his office, fully proved and declared, and the proofs thereof recorded in the book of their proceedings, remove him and appoint another in his place.

Rev., s. 4561; 1899, c. 1, s. 69; 1917, c. 150, s. 1.

6174. Powers of superintendent. The superintendent of each hospital shall exercise exclusive direction and control over all the subordinate officers and employees engaged in the service and labors of his hospital, and he may discharge such as have been employed by himself or his predecessors, and shall report to the board of directors the misconduct of all subordinates.

Rev., s. 4562; 1899, c. 1, s. 13; 1917, c. 150, s. 1.

6175. Superintendent to notify sheriff of escape. Any superintendent may notify the sheriff within whose county any person sent from his hospital on probation, or escaped therefrom, may be found, and thereupon it shall be the duty of such sheriff forthwith to take such person and return him to such hospital at the expense of the county of the settlement of the patient.

Rev., s. 4563; 1899, c. 1, s. 27.

6176. Assistant physicians; appointment and removal. Each superintendent shall appoint one or more assistant physicians, the number to be fixed by the board of directors. The superintendent shall have the power to prescribe the duties of each assistant physician, and may suspend him, or any employee, for thirty days, for insubordination, immorality, neglect of duty, or incompetence, and, by and with the advice of the executive committee of the board of directors, may remove such assistant physician, or employee, for like cause. Each assistant physician shall hold his office for two years, unless removed for cause, which shall be specified and the action of the superintendent and executive committee reported to the board of directors, which shall record the same on its minutes.

Rev., s. 4564; 1899, c. 1, s. 10.

6177. Steward and matron; appointment and removal. Each superintendent shall appoint a steward, and if he shall think proper to do so, a matron also, who shall hold their places for one year, unless sooner suspended or removed by the superintendent or board of directors for good cause, in which case their successors shall be appointed for the unexpired terms of those removed. The method of procedure for the suspension and removal of assistant physicians, contained in the preceding section, shall be followed in the suspension and removal of any steward or matron.

Rev., s. 4565; 1899, c. 1, s. 11.

6178. Steward to give bond. The steward, before entering upon the discharge of his duties, shall execute to the hospital a bond in the sum of two thousand five

hundred dollars, with sureties, to be approved by the board of directors, conditioned for the faithful administration of his duties and the proper accounting for and disbursement of all money and property coming into his hands.

Rev., s. 4566; 1899, c. 1, s. 11.

6179. Salaries of employees fixed by directors. The board of directors shall fix the salaries and compensation of the superintendent, and the officers and employees whose services may be necessary for the management of the hospitals under charge of said board. The salaries shall not be diminished during the term of the incumbents. The salary of the superintendent shall be a sum certain, without other compensation or allowance, except such rooms in the hospital for the use of his family, and such articles of food produced on the premises, as said board of directors may permit.

Rev., s. 4567; 1899, c. 1, s. 12; 1917, c. 150, s. 1.

6180. Directors to keep record of proceedings; clerk. The board of directors shall cause all their proceedings to be faithfully and carefully written and recorded in books, and to this end may employ a clerk, and pay him a reasonable compensation for his services. The books shall, at all times, be open to the inspection of the general assembly.

Rev., s. 4568; 1899, c. 1, s. 36; 1917, c. 150, s. 1.

6181. Superintendent may appoint employees as policemen, who may arrest without warrant. The superintendent of each hospital and the superintendent of the North Carolina school for the deaf and dumb is each hereby empowered to appoint such number of discreet employees of his hospital or school as he may think proper, special policemen, and within the grounds of such hospital or school the said employees so appointed policemen shall have all the powers of policemen of incorporated towns. They shall have the right to arrest without warrant persons committing violations of the state law or the ordinances of that hospital or school, in their presence, and within the grounds of their hospital or school, and carry the offenders before some justice of the peace for trial. The justice of the peace shall issue a warrant and proceed as in other criminal cases before him.

Rev., s. 4569; 1899, c. 1, s. 55; 1901, c. 627.

6182. Oath of special policemen. Before exercising the duties of a special policeman, the employees appointed, as in the preceding section, shall take an oath of office before some justice of the peace of the county, or other officer empowered to administer oaths, and the same shall be filed with the records of the board of directors. The oath of office shall be as follows:

STATE OF NORTH CAROLINA, COUNTY.

I,, do solemnly swear (or affirm) that I will well and truly execute the duties of office of special policeman in and for the state hospital at, according to the best of my skill and ability and according to law; and that I will use my best endeavors to enforce all the ordinances of said hospital, and to suppress nuisances, and to suppress and prevent disorderly conduct within said grounds. So help me, God.

Sworn and subscribed before me, this day of, A. D.

Rev., s. 4570; 1899, c. 1, s. 56; 1901, c. 627.

6183. Volunteer firemen among employees rewarded. The board of directors shall have power to provide benefits, to be paid to any employee of the hospital who shall be injured while discharging the duties of a volunteer fireman. And the board may inaugurate a system by which a fund is raised to provide suitable benefits for said firemen, and may contribute from the funds of the hospital for that purpose. The volunteer firemen at the various hospitals shall not share in the state firemen's relief fund.

Rev., s. 4571; 1899, c. 1, s. 59; 1917, c. 150, s. 1.

ART. 3. ADMISSION OF PATIENTS

6184. Persons adjudged insane entitled to immediate admission. Any resident of North Carolina who has been legally adjudged to be insane by the clerk of the court or other properly authorized person, in accordance with the provisions of this chapter shall be entitled to immediate admission into the state hospital at Morganton, the state hospital at Raleigh, or the state hospital at Goldsboro, in accordance with the principles of division as to race and residence prescribed in this chapter; and no resident of the state who has been legally adjudged insane and who has been presented to the superintendent of the proper state hospital for the insane as provided in this article shall be refused admission thereto; but nothing in this article shall be construed to affect the discharge or transfer of patients as now provided by law.

1919, c. 326, ss. 1, 6.

6185. Idiots not admitted. No idiot shall be admitted to any hospital, and for the purpose of this chapter an idiot is defined to be a person born deficient in mind.

Rev., s. 4572; 1899, c. 1, s. 18.

6186. Priority given to indigent patients; payment required from others. In the admission of patients to any state hospital, priority of admission shall be given to the indigent insane; but the board of directors may regulate admissions, having in view the curability of patients, the welfare of the institutions, and the exigencies of particular cases. The board of directors may, if there be sufficient room, admit other than indigent patients upon the payment of proper compensation. If any inmate of any state hospital shall require private apartments, extras, or private nurses, the directors, if practicable, shall provide the same at a fair price to be paid by such patient. Upon the death of any nonindigent patient, the state hospital may maintain an action against his estate for his support and maintenance for a period of five years prior to his death.

Rev., s. 4573; 1899, c. 1, s. 44; 1915, c. 254; 1917, c. 150, s. 1.

An insane person, able to pay expenses at the state hospital, is not entitled to free admission: *Hospital v. Fountain*, 128-23—and superintendent has no power to bind the state by agreeing otherwise: *Ibid*.

"Indigent insane persons" includes all those who have no income over and above what is sufficient to support those who may be legally dependent upon the estate: *In re Hybart*, 119-359. As to who are legally dependent upon the estate, see *Ibid*.

6187. Only bona fide residents admitted to hospitals. No clerk of the court or justice of the peace shall commit to a hospital any person who is not a bona fide

citizen and resident of this state; and no person who shall have removed into this state from another state while insane shall be deemed a resident or citizen of this state, and no length of residence in this state of a person who was insane at the time he moved into this state shall be sufficient to make that person a citizen or resident of North Carolina within the meaning of this chapter. If any clerk or justice of the peace shall knowingly commit to any hospital a person who is not a bona fide citizen and resident of the state, he shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned at the discretion of the court.

Rev., ss. 3591, 4587; 1899, c. 1, s. 18.

6188. Findings as to residence in examination reported. In every examination of an alleged insane person it shall be the duty of the clerk or justice of the peace to particularly inquire whether the alleged insane person is a resident of this state, as hereinbefore set forth, and he shall state his findings upon the subject in his report to the superintendent of the hospital. If it is not possible to ascertain the legal residence of the alleged insane person, and the clerk or justice of the peace shall be of the opinion that the insane person is a resident of this state, within the meaning of this law, he shall state that he was unable to ascertain the legal residence of the insane person, and shall commit him to the hospital of his district.

Rev., s. 4588; 1899, c. 1, s. 18.

6189. Settlement of patient determined. For the purposes of this chapter the settlement of every person admitted to a state hospital as insane shall be in the county where the actual place of his residence at his admission may be situated, when such settlement comes in question, but no person can have a settlement in any county in this state unless he is a bona fide citizen and resident of this state, and was so before mental disease became manifest.

Rev., s. 4574; 1899, c. 1, s. 28.

6190. Affidavit of insanity to procure admission. For admission into a state hospital the following proceedings shall be had: Some respectable citizen, residing in the county of the alleged insane person, shall make before and file with the clerk of the superior court of the county an affidavit in writing, which shall be substantially in the following form:

STATE OF NORTH CAROLINA, COUNTY.

The undersigned, residing in said county, makes oath that he has carefully examined and believes him to be an insane person, and to be, in the opinion of the undersigned, a fit subject for admission into a hospital for the insane.

Dated day of, A. D.

....., *Affiant.*

Sworn and subscribed before me,,

Rev., s. 4575; 1899, c. 1, s. 15. *Clerk Superior Court.*

6191. Clerk to issue order for examination. Whereupon, unless the person in whose care or custody the insane person is will agree to bring him before the clerk without a warrant, or unless the clerk shall be of the opinion that it will be injurious to the insane person to be brought before him, the clerk shall issue a

precept, directed to the sheriff or other lawful officer, substantially in the following form:

State of North Carolina,

To the Sheriff or Other Lawful Officer of County—Greeting:

Whereas information, on oath, has been laid before me that is insane, you are hereby commanded to bring him before me within the next ten days, that necessary proceedings may be had thereon.

Given under my hand, day of, A. D.

Rev., s. 4576; 1899, c. 1, s. 15.

.....,
Clerk Superior Court.

6192. Clerk and physician to make examination. If the alleged insane person be confined in jail otherwise than for crime, the sheriff shall remove him from the jail upon the order from the clerk. Upon the bringing of the alleged insane person before the clerk by his friends, or upon the return of the precept with the body of the insane person, the clerk shall call to his assistance the county physician of the county, or some other licensed and reputable physician, resident of this state, and shall proceed to examine into the condition of mind of the alleged insane person. He shall take testimony of at least one licensed physician, resident of this state, and, if possible, a member of the family, or some friend or person acquainted with the alleged insane person, who has had opportunities to observe him after such insanity is said to have begun.

Rev., s. 4577; 1899, c. 1, s. 15.

NOTE.—The county health officer, if there be one, performs the duties of county physician. See Public Health, s. 7068.

6193. Clerk may discharge person, require bond, or commit to hospital. If the clerk, after his examination of the alleged insane person, and the hearing of the testimony as aforesaid, shall decide that such person is sane, he shall forthwith discharge him. If he shall decide that such person is insane, and some friend, as he may do, will not become bound with good security in an amount to be fixed by the clerk to restrain him from committing injuries, and to keep, support, and take care of him until the cause for confinement shall cease, he shall direct such insane person to be removed to the proper hospital as a patient, and to that end he shall transmit to the proper board of directors the examination of the witnesses, and the statement of such facts as he shall deem pertinent to the subject-matter.

Rev., s. 4578; 1899, c. 1, s. 15; 1915, c. 204, s. 1.

6194. Examination at home of patient. If the clerk of the court shall be of the opinion that it will be injurious to the alleged insane person to be brought before him, the clerk shall proceed to the residence or habitation of said person and take the examination there.

Rev., s. 4579; 1899, c. 1, s. 15.

6195. When justice of the peace may make examination. In a case of emergency, when for any reason the clerk of the court cannot go or is absent from the county, then any justice of the peace is authorized to proceed in like manner by taking the testimony of the physician and other witnesses, as is before provided for in this chapter, and report the same to the clerk. If the clerk is satisfied that

the alleged insane person is a fit subject for a hospital for the insane, he shall issue an order for his commitment. In cases of great emergency or inconvenience, the said justice may commit a patient to a hospital, and the superintendent is authorized to receive him, but the justice shall procure an order from the clerk to be forwarded to the superintendent within thirty days.

Rev., s. 4580; 1899, c. 1, s. 15.

6196. Questions to be answered and certified to superintendent. The following questions, with their respective answers by at least one licensed physician, resident of this state, and such other competent witnesses as the clerk or justice shall determine, duly sworn and subscribed by them, and so certified by the clerk or justice, shall be transmitted with the other papers to the superintendent of the proper hospital, to be reported as soon as practicable to the board of directors. Pending the consideration of the application by the board of directors, the patient shall remain in the custody of the officer or such person as the clerk may designate until it can be ascertained if there is room for the patient at the hospital:

- Question 1. What is the name of the patient?
Answer:
- Question 2. Is white or colored?
Answer:
- Question 3. What is age?
Answer:
- Question 4. What is the occupation of patient?
Answer:
- Question 5. Is married or single; and if married, for how many years?
Answer:
- Question 6. If patient be married woman, state maiden name.
Answer:
- Question 7. Has any education; if so, how much?
Answer:
- Question 8. Where was born?
Answer:
- Question 9. How many attacks of mental disease has the patient had?
Answer:
- Question 10. What is the supposed cause of the present attack of insanity?
Answer:
- Question 11. Has been subject to epilepsy?
Answer:
- Question 12. How long has been insane? (Count from first symptoms of present attack, and give all known symptoms from that time to this date.)
Answer:
- Question 13. In what way is the disease exhibited?
Answer:
- Question 14. Has any delusions? If so, what are they?
Answer:
- Question 15. Is destructive to clothing or furniture?
Answer:
- Question 16. Is filthy or indecent?
Answer:
- Question 17. Has the patient manifested any propensity to injureself or others? If so, in what way and how often?
Answer:

- Question 18. Has ever threatened suicide?
 Answer:
- Question 19. Has ever attempted suicide?
 Answer:
- Question 20. Has ever threatened homicide?
 Answer:
- Question 21. Has ever attempted to commit homicide?
 Answer:
- Question 22. Has any family; and if so, what persons compose it? Age of youngest child?
 Answer:
- Question 23. Are any of them insane, and what is the character of such insanity?
 Answer:
- Question 24. Are parents of the insane person related by blood? If so, what is the degree of relationship?
 Answer:
- Question 25. Have any of ancestors been insane? If so, state what ancestors, and what was the character of their insanity?
 Answer:
- Question 26. Are any of relatives deaf, dumb, blind, idiotic, epileptic, or paralyzed? If so, state relationship?
 Answer:
- Question 27. What is bodily condition? Chronic or acute physical disease? State the diseases and stage of disease (wounds, bruises, rupture, pregnancy.)
 Answer:
- Question 28. Has any medical treatment been pursued? If so, what kind and by whom?
 Answer:
- Question 29. Is in jail?
 Answer:
- Question 30. Is in the poorhouse?
 Answer:
- Question 31. Is under any forcible restraint? If so, what?
 Answer:
- Question 32. Has patient any property? If so, state in what property consists, and what is the value thereof?
 Answer:
- Question 33. Has the patient received any aid from the county? If so, what?
 Answer:
- Question 34. Give name and postoffice of the nearest relative with whom the superintendent of the hospital can correspond, as circumstances require, for the benefit of the patient.
 Answer:
 Name
 Relationship
 P. O. Address
- Question 35. Give any information in your possession not embraced in the above questions which may throw light on the mental or physical condition of the patient.
 Answer:

....., M. D.

.....

Witnesses

STATE OF NORTH CAROLINA, COUNTY.

Before, officer, duly authorized to administer an oath, this day of, A. D., came

M. D., and persons known to be credible and reliable witnesses, and make oath that the foregoing answers are true to the best of their knowledge and belief.

Rev., s. 4589; 1899, c. 1, s. 19.

6197. Clerk to keep record of examinations and discharges. The clerk will keep a record of all examinations of persons alleged to be insane, and he shall record in such record a brief summary of the proceedings and of his findings, and whenever a justice of the peace shall transmit to the clerk a report of his proceedings when he shall have examined a person under the powers granted under this chapter, the clerk shall make a record of his proceedings, and for recording the justice's proceedings he shall be entitled to a fee of twenty-five cents, to be paid by the county aforesaid, and he shall keep a record of all probations and discharges provided for in article four of this chapter.

Rev., s. 4586; 1899, c. 1, s. 17.

6198. Fees for examination. The following fees shall be allowed to the officers who make the examination, and they shall be paid by the county in which the alleged insane person is settled: To the clerk or justice who makes the examination, two dollars, and if the clerk goes to the home of the insane person he shall be entitled, in addition to this sum, to five cents a mile each way. This shall cover his entire cost in taking the examination and making out the necessary papers.

The physician called, in the absence of the county physician, shall be entitled to two dollars with mileage. The county physician, being a salaried officer, is not allowed any fee for his services in this examination. The sheriff shall be entitled to such fees as are now allowed by law for the service of process of similar character.

Rev., ss. 4580, 4581; 1899, c. 1, s. 15.

6199. Superintendent of hospital notified; attendant to convey patient. Whenever any insane person shall be entitled to admission in any one of the hospitals of the state as prescribed by law, and the clerk of the superior court or other officer authorized by law to find such person insane has so found, it shall be the duty of the clerk or other officer forthwith to notify the superintendent of the proper hospital, giving the name, race, sex and age of patient; and it shall be the duty of such superintendent, unless said patient has been exposed to a contagious disease as hereinafter mentioned in this article, to send an attendant to bring such insane person to the hospital. Such attendant shall have all such rights as the sheriff or other officer has heretofore, and to convey such insane person to the hospital.

1919, c. 326, s. 2.

6200. Bill of expense sent to county commissioners. Upon the arrival of such insane person at the hospital, the superintendent shall send to the board of commissioners of the county in which such insane person had a settlement a bill covering the costs of conveying such insane person to the hospital, including any fees that would now be allowed an officer, and it shall be the duty of the board of commissioners forthwith to repay to such hospital the amount of such bill.

1915, c. 204, s. 2; 1919, c. 326, s. 3.

6201. Failure of superintendent to send attendant; sheriff to act. If the superintendent of any hospital for the insane in this state shall, for ten days after receiving a notice as prescribed in section 6199, fail and neglect to send an attendant, as is prescribed by section 6199, to bring such insane person to the hospital, it shall be the duty of the sheriff of the county from which the notice was sent to bring at the expense of the county such insane person to the state hospital, whereupon it shall be the duty of the said superintendent to receive said insane person and relieve said sheriff of his care.

1919, c. 326, s. 4.

6202. Cost of conveying patients to and from hospital; how paid. The cost and expenses of conveying every insane person to any hospital from any county, or of removing him from the hospital to his county, or of the return to the county of his settlement, as sane, shall be paid by the treasurer of such county, upon the order of its board of county commissioners. Whenever the board of commissioners shall be satisfied that such person has property sufficient to pay such cost and expenses, or that some other person liable for his support and maintenance has property sufficient to pay such costs and expenses as aforesaid, they shall bring an action and recover the amount paid from the said person, or from the other person liable for his support and maintenance.

Rev., s. 4555; 1899, c. 1, s. 32.

6203. Preparation of patient for admission to hospital. Every sheriff or other person bringing to a hospital a patient shall see that the patient is clean, free from contagious disease and vermin, and that he has clothing proper for the season of the year, and in all cases two full suits of underclothing.

Rev., s. 4556; 1899, c. 1, s. 24.

6204. Commitment in case of sudden or violent insanity. Whenever any citizen or resident of this state becomes suddenly or violently insane, in some county other than that of his settlement, the proper authorities, as hereinbefore provided, of any county in which he shall be, shall have authority to examine him, and if necessary commit him to the hospital to which he would be sent had he been committed from the county of his own settlement.

Rev., s. 4582; 1899, c. 1, s. 16.

6205. Expense paid by county of settlement; penalty. Immediately upon the commitment to a hospital of any such person, a transcript of the proceedings shall be sent to the clerk of the county in which he is settled, and that county shall pay over to that county from which he was committed all the cost of the examination and commitment, and if the board of commissioners of the county of the settlement shall fail to pay all proper expense of said proceedings within sixty days after the claim shall have been presented, they shall forfeit and pay to the county which committed the insane person the sum of two hundred and fifty dollars, to be recovered by the commissioners of that county in a civil action brought in the superior court of that county from which the patient was committed to the hospital, against the commissioners of the county.

Rev., s. 4583; 1899, c. 1, s. 16.

6206. Person conveying patient to hospital without authority. No sheriff or other person shall convey a patient to any hospital without having ascertained that the patient will be admitted, and if any sheriff or other person shall carry a patient to a hospital without having ascertained that the patient will be admitted, and the patient is not admitted, he shall be required to convey the patient back to the county of his settlement, and he shall not be repaid by the county or hospital for the expenses incurred in carrying the patient to and from the hospital.

Rev., s. 4546; 1899, c. 1, s. 25.

6207. How admission determined, when superintendent is in doubt. Whenever any insane person shall be conveyed to any hospital, and the superintendent is in doubt as to the propriety of his admission, he may convene any three of the board of directors, who shall constitute a board for the purpose of examining and deciding if such person is a proper subject for admission; and if a majority of such board so decide, such person shall be received into said hospital; but a like board may at any time thereafter deliver such insane person to any friend who will become bound with good surety to restrain him from committing injuries, and to keep, maintain, and take care of him, in the same manner as he might have become bound under the authority of the clerk of the court.

Rev., s. 4590; 1899, c. 1, s. 21; 1917, c. 150, s. 1.

6208. Admission refused, if patient exposed to contagious disease. The superintendent of the hospital may refuse to receive into his institution a patient when he shall have reliable information that the patient has recently been exposed to infectious or contagious disease, and there is danger of contagion and infection being conveyed by the patient, or where the patient comes from a quarantined community. Whenever a patient is rejected because of any of these reasons the superintendent shall make a record of the application, and as soon as, in his opinion, the danger shall have been removed, he shall notify the sheriff of the county, and admit the patient into his hospital.

Rev., s. 4591; 1899, c. 1, s. 26.

6209. Commitment upon patient's own application. Any person believing himself to be of unsound mind, or threatened with insanity, may voluntarily commit himself to the proper hospital. The application for commitment shall be in the form following:

STATE OF NORTH CAROLINA, COUNTY OF

I,, a resident of county, North Carolina, being of mind capable of signifying my wishes, do hereby solicit admission as a patient in the state hospital at for such a period of time as the board of directors and the superintendent may deem necessary. And I agree in all respects to conform to the rules and regulations of said institution during the period which shall be prescribed by the superintendent and board of directors.

Attest:

This application shall be accompanied by the certificate of a licensed physician, which certificate shall state that in the opinion of the physician the applicant is a fit subject for admission into a hospital, and that he recommends his

admission. The certificate of the clerk of the superior court need not accompany this application. The superintendent may, if he think it a proper application, receive the patient thus voluntarily committed, and treat him until the next meeting of the board of directors or of the executive committee, and shall report the application and admission to the first meeting of said board, and if said board approve such admission, the patient shall be considered as having been regularly committed, and shall in all respects be treated as such. But no report need be made to the clerk of the court of his county of settlement. The superintendent and board of directors shall have the same control over patients who commit themselves voluntarily as they have over those committed under the regular proceedings hereinbefore provided. And no voluntary patient shall be entitled to a discharge until he shall have given the superintendent ten days notice of his desire to be discharged.

Rev., s. 4593; 1899, c. 1, s. 49; 1917, c. 150, s. 1.

6210. Proceedings in case of insanity of citizen of another state. If any person not a citizen or resident of this state, but a citizen and resident of another state of the United States, shall be ascertained to be insane, the clerk of the court shall immediately notify the governor of the state of which the insane person is a citizen of the facts and circumstances by letter (or telegraphic message if he think proper), and for a reasonable length of time the insane person shall be kept confined or restrained in said county, but shall not be committed to any state hospital, and if the state of his citizenship shall not provide for the removal from this state to his proper state of the insane person within a reasonable time, the county commissioners of the county in which he shall have been ascertained to be an insane person shall cause him to be conveyed to the state of which he is a citizen and delivered there to the sheriff of his county or to the superintendent of any state hospital. The cost of such proceedings and conveyance away from this state shall be borne by the county in which the person shall have been adjudged to be insane.

Rev., s. 4584; 1899, c. 1, s. 16.

6211. Proceedings in case of insanity of alien. If any person, not a citizen of the United States, shall be ascertained to be insane, the clerk of the court shall immediately notify the governor of this state of the name of the insane person, the country of which he is a citizen, and his place of residence in said country if the same can be ascertained, and such other facts in the case as he may obtain, together with a copy of the examination taken; and the governor shall transmit such information and examination to the secretary of state at Washington, D. C., with the request that he inform the minister resident or plenipotentiary of the country of which the insane person is supposed to be a citizen.

Rev., s. 4585; 1899, c. 1, s. 16.

6212. Insane person temporarily committed to jail. When any person is found to be insane under any of the provisions of this chapter, and he cannot be immediately admitted to the proper hospital, and such person is also found to be subject to such acts of violence as threaten injury to himself and danger to the

community, and he cannot otherwise be properly restrained, he may be temporarily committed to the county jail until a more suitable provision can be made for his case.

Rev., s. 4594; 1899, c. 1, s. 45.

ART. 4. DISCHARGE OF PATIENTS

6213. County commissioners may discharge insane person in county. It shall be the duty of the board of county commissioners, by proper order to that effect, to discharge any ascertained insane person in their county, not admitted to the appropriate hospital, and not committed for crime, when it shall appear upon the certificate of two respectable physicians, and the chairman of their board, that such insane person ought to be discharged if in a hospital.

Rev., s. 4595; 1899, c. 1, s. 20.

6214. Discharge of patient from hospital; sheriff's duty; expense paid. Any three of the board of directors, upon the superintendent certifying the facts (a copy of which certificate shall be sent to the clerk of the superior court of the county of settlement), shall be a board to discharge or remove from their hospital any person admitted as insane, when such person has become or is found to be of sane mind, or when such person is incurable, and in the opinion of the superintendent his being at large will not be injurious to himself or dangerous to the community, or the board may permit such person to go to the county of his settlement on probation, when in the opinion of the superintendent it will not be injurious to himself or dangerous to the community; and the board may discharge or remove such person, upon other sufficient causes appearing to them; and whenever any such person, admitted as indigent, may be so discharged or removed, except as sane, it shall be the duty of the sheriff of the county of his settlement to convey such person to his county at its expense, and any such person discharged as restored or probated shall receive from such hospital a sum of money sufficient to pay his transportation to the county of his settlement, which sum shall be repaid by said county, and, if necessary, the hospital shall provide the patient with a decent suit of clothes. When notified by the superintendent to come for and remove any insane person from the hospital, it shall be the duty of the sheriff of the county in which the insane person has a settlement forthwith to convey the insane person from the hospital to the county of his settlement. The cost of such removal shall be advanced by the sheriff and repaid to him by the county of insane person's settlement; and if any sheriff, after having been notified by the superintendent to remove any insane person, as aforesaid, shall fail to do so within fifteen days from the time of the receipt of the letter of notice, he shall forfeit and pay to the hospital the sum of fifty dollars, to be collected in the manner provided for the collection of penalties given in this chapter; and if the commissioners of any county shall fail to repay to the hospital the money disbursed in paying for the necessary clothes and traveling expenses of any person discharged as cured from said hospital, within sixty days after the presentation of a claim therefor, the commissioners shall forfeit and pay to the hospital the sum of fifty dollars, to be collected in the manner provided for the collection of penalties in this chapter.

Rev., s. 4596; 1899, c. 1, s. 22; 1917, c. 150, s. 1.

Directors and superintendent not liable in damages for discharge of patient who subsequently kills a third person: *Ballinger v. Rader*, 151-383. Form of certificate of discharge: *In re Thorp*, 150-487. But this certificate recorded in the book of "settlements" in the clerk's office does not make such record evidence: *Ibid*.

6215. Superintendent may discharge patient temporarily. Each superintendent may, for the space of thirty days, or until the next meeting of the board of three directors provided for in the preceding section, discharge upon probation any patient, when in his opinion the same would not prove injurious to the patient or dangerous to the community. A report of all such probations shall be rendered to the said board of three directors at their first ensuing meeting.

Rev., s. 4597; 1899, c. 1, s. 23.

6216. Bonds for safe-keeping of insane persons; enforcement. All bonds executed for restraining insane persons from committing injuries, and for their safe-keeping, support and care, shall be payable to the state of North Carolina, in the sum of five hundred dollars at least, and shall be transmitted to the clerk of the superior court of the county wherein said insane person is settled, for safe-keeping, and may be put in suit by any person injured by said insane person by reason of his insane condition; and shall be put in suit by the solicitor for the judicial district in which the county of said insane person's residence is situated, for any other breach thereof, wherein the damage received shall be for the use of said insane person.

Rev., s. 4598; 1899, c. 1, s. 29.

6217. Form of bond for safe-keeping of insane. The form of bond mentioned in the preceding section shall be as follows:

STATE OF NORTH CAROLINA, COUNTY OF

Know all men by these presents, that we, A..... B....., principal, and C..... D....., and E..... F....., sureties, are held and firmly bound unto the State of North Carolina in the sum of dollars, for the payment whereof we bind ourselves and each of us.

Witness our hands and seals, this day of, 19....

The condition of the above obligation is this:

Whereas, the said A..... B....., with the view of hindering G..... H....., an insane person resident in the county aforesaid, from being sent to insane hospital (or to effect his release from the said hospital, as the case may be), hath undertaken to restrain him from committing injuries and to keep, maintain, support, and take care of the said G..... H..... Now, if the said A..... B..... shall faithfully comply with the conditions of this obligation, then the same shall be void, otherwise it shall be in full force.

A.....B..... (Seal)

C.....D..... (Seal)

E.....F..... (Seal)

Rev., s. 4599; 1899, c. 1, s. 30.

6218. Patient returned, if condition of bond not complied with. Whenever it shall be made to appear to the clerk of the superior court of the county of settlement of an insane person released on bond that the conditions of the bond are not faithfully complied with, said insane person shall be sent back to the proper hospital by him, unless some other responsible and discreet friend will undertake

to fulfill the duties of said obligation; and whenever said insane person shall be sent back, he shall not be delivered on any new bond of the defaulting obligor.

Rev., s. 4592; 1899, c. 1, s. 33.

ART. 5. PRIVATE HOSPITALS FOR THE INSANE

6219. Established under license and subject to control of board of charities. It shall be lawful for any person or corporation to establish private hospitals, homes, or schools for the cure and treatment of insane persons, idiots, and feeble-minded persons and inebriates; but license to establish such hospitals, homes, or schools must, before the same are opened for patronage, be obtained from the state board of charities and public welfare, and such hospitals, homes, or schools shall at all times be subject to the visitation of the said board or any member thereof, and each hospital, home, or school shall make to the board a semiannual report on the first days of January and July of each year. In said report shall be stated the number and residence of all patients admitted, the number discharged during the six months preceding, and the officers of the hospital, home, or school. Each hospital, home, or school shall file with the board a copy of its by-laws, rules, and regulations, and rates of charges. The books of each hospital, home, or school shall at all times be open to the inspection of the board or any member thereof. The state board of charities and public welfare is hereby given the authority to supervise and regulate all private hospitals, homes, and schools established hereafter in this state for the treatment of the above classes of people, and the board shall have power to prescribe all such rules and regulations as they may deem necessary, and shall exercise the power of visitation, and for that purpose may depute any member of their board to visit and supervise any private hospital, home, or school hereafter established under this article. The state board of charities may bring an action in the superior court of Wake county to vacate and annul any license granted by the board, when it shall appear to the satisfaction of the board that the managers of any private hospital, home, or school have been guilty of gross neglect, cruelty, or immorality.

Rev., s. 4600; 1899, c. 1, s. 60.

Liability of proprietor of a private hospital for damages for negligence: *Green v. Biggs*, 167-417; *Hoke v. Glenn*, 167-594. Damages for the wrongful detention of a sane person in a private hospital for the insane: *Cook v. Hospital*, 168-250.

NOTE.—See Boards of Charities, art. 1.

6220. Counties and towns may establish hospitals. Any county, city, or town may establish a hospital for the maintenance, care, and treatment of such insane persons as cannot be admitted into a state hospital, and of idiots and feeble-minded persons upon like conditions and requirements as are above prescribed for the institution of private hospitals; and the state board of charities and public welfare is given the same authority over such hospitals as is given them by the preceding section for private hospitals.

Rev., s. 4601; 1899, c. 1, s. 61.

6221. Private hospitals part of public charities. All hospitals, homes, or schools for the care and treatment of insane persons, idiots, and feeble-minded persons and inebriates, formed in compliance with the two preceding sections and duly

licensed by the board of public charities as in this article provided, shall, during the continuance of such license, become and be a part of the system of public charities of the state of North Carolina.

Rev., s. 4602; 1903, c. 329, s. 1.

6222. Insane persons placed in private hospital. Whenever any person shall be found to be insane in the mode hereinbefore prescribed, and such person shall be possessed of an income sufficient to support those who may be legally dependent for support on the estate of such insane person, and, moreover, to support and maintain such insane person in any named hospital without the state, or any private hospital within the state, and such insane person, if of capable mind to signify such preference, shall, in writing, declare his wish to be placed in such hospital instead of being in a state hospital (or in case such insane person is incapable of declaring such preference, then the same may be declared by his guardian), and two respectable physicians who shall have examined such insane person, with the clerk of the court or justice of the peace who made the examination, shall deem it proper, then it may be lawful for the clerk or justice, together with said physicians, to recommend in writing that such insane person shall be placed in the hospital so chosen, as a patient thereof.

Rev., s. 4603; 1899, c. 1, s. 39.

6223. Justice of the peace to report to clerk. It shall be the duty of the justice, when he shall act, to report the proceedings in such cases to the clerk of the superior court of the county in which such insane person may reside or be domiciled.

Rev., s. 4604; 1899, c. 1, s. 41.

6224. Clerk to report proceedings to judge. The clerk of the court shall lay the proceedings before the judge of the superior court of the district in which such insane person may reside or be domiciled, and if he approve them, he shall so declare in writing, and such proceedings, with the approval thereof, shall be recorded by the clerk.

Rev., s. 4605; 1899, c. 1, s. 42.

6225. Certified copy and approval of judge sufficient authority. A certified copy of such proceedings, with the approval of a judge, shall be sufficient warrant to authorize any friend of such insane person appointed by the judge to remove him to the hospital designated.

Rev., s. 4606; 1899, c. 1, s. 43.

6226. Examination and commitment to private hospital. When it is deemed advisable that any person, a citizen of the state of North Carolina, or a citizen of another state or country temporarily sojourning in North Carolina, should be detained in any private hospital within the state, two persons, one of whom must be a physician, not connected with any private hospital, shall make affidavit before a justice of the peace or a clerk of the superior court of this state that they have carefully examined the alleged insane person; that they believe him to be a fit subject for commitment to a hospital for the insane, and that his detention and treatment will be for his advantage and benefit. This certificate shall

be filed with and approved by the clerk of the superior court in the county in which the examination is held, or in the county in which the private hospital is located, and a certified copy of this certificate and approval of the clerk shall be deposited with the superintendent of the private hospital as his authority for holding the insane person. The clerk of the court may, if he sees fit, issue warrants and have the alleged insane person before him in manner prescribed in article three of this chapter for the examination and admission to state hospitals, and he may, if he see fit, order any insane person brought before him to be taken to a private hospital within the state instead of one of the state hospitals, and his warrant shall be sufficient authority for holding such insane person in such private hospital. Idiots, feeble-minded persons, and inebriates may be committed to and held in private hospitals or homes in this state in the manner hereinbefore prescribed for insane persons: Provided, that a period of detention in a private hospital or home of not less than one month and not more than six months shall be prescribed for inebriates, at the discretion of the clerk of the superior court approving the commitment.

Rev., s. 4607; 1903, c. 329, s. 2.

6227. Patients transferred from state hospital to private hospital. When it is deemed desirable that any inmate of any state hospital be transferred to any licensed private hospital within the state, the executive committee may so order, and a certified copy of the commitment on file at the state hospital and the order of the executive committee shall be sufficient warrant for holding the insane person, idiot, or inebriate by the officers of the private hospital.

Rev., s. 4608; 1903, c. 329, s. 3.

6228. Guardian of insane person to pay expenses out of estate. It shall be the duty of any person having legal custody of the estate of an insane person, idiot, or inebriate legally held in a private hospital to supply funds for his support in the hospital during his stay therein and so long as there may be sufficient funds for that purpose over and beyond maintaining and supporting those persons who may be legally dependent on the estate.

Rev., s. 4610; 1899, c. 1, s. 40; 1903, c. 329, s. 4.

6229. Fees and charges for examinations. The fees and charges for examination for admission to private hospitals shall be the same as for examinations for admission to the state hospitals.

Rev., s. 4611; 1903, c. 329, s. 5.

ART. 6. HOSPITAL FOR DANGEROUS INSANE

6230. Hospital created, and under control of state's prison board. A hospital for the dangerous insane is hereby created a corporation under the name of The State Hospital for the Dangerous Insane, and shall be under the direction and management of the board of directors of the state's prison, which shall be ex officio the board of directors of the said corporation, which board shall, in its name, have power to receive, hold, and manage all such property or estate as may be hereafter given to, or otherwise acquired by, the corporation, and shall have the same control and direction of the affairs of the corporation as is given by law

to the board of directors of the other state hospitals. The hospital shall be located in the wards of the state's prison where the dangerous insane are now cared for and treated, in which hospital shall be admitted, cared for, and treated the dangerous insane as now provided by law.

Rev., s. 4612; 1901, c. 755, s. 1.

General effect of this article stated: *State v. Craig*, 176-740.

6231. Government of hospital. This chapter as to the government of the state hospitals shall, as far as practicable, be applicable to and shall regulate the government of the state hospital for the dangerous insane, when not inconsistent with the provisions of this chapter, except that there shall be elected only such assistants and other officers as the said board of directors may think proper.

Rev., s. 4613; 1901, c. 755, s. 6.

6232. Duties of board. It shall be the duty of the board of directors of said corporation, as soon as practicable, by partitions, walls, and otherwise, to fully and completely separate the said hospital from said prison, and they shall change the same so as to conform to the purposes of a hospital for the insane. They shall advise with the superintendents of the three hospitals for the insane before making such changes as to what is necessary for the safety, comfort, and welfare of the patients. It shall be the duty of the board of directors of the state's prison to furnish to the said hospital all labor free of charge, and all material at cost, necessary for building said walls and partitions, and for placing the wards and apartments herein referred to in a proper condition, and the hospital shall not be a part of the state's prison, but shall be the state hospital for the dangerous insane. The board of directors of the state's prison is hereby directed and required to furnish to the hospital heat, lights, and water at cost, and do all things proper and necessary for the comfort, maintenance, and humane treatment of the dangerous insane herein committed to its care. In said hospital the sexes and races shall be kept in separate wards and apartments.

Rev., s. 4614; 1901, c. 755, s. 3.

6233. Directors appoint a physician; term of office. The board of directors of the state hospital for the dangerous insane shall appoint a skilled physician, educated to his profession, of good moral character, of prompt business habits, and of kindly disposition, to have charge of the insane committed to its care. He shall be required to perform the duties of physician to each of said institutions, and shall be paid from the funds belonging to the said institutions, respectively, such amount as shall be prescribed and agreed upon by the board of directors. He shall hold his office for four years, unless sooner removed by the said board, which may, for infidelity to his trust, gross immorality, or incompetence to discharge the duties of his office, fully proved and declared, the proof recorded in the book of their proceedings, remove him and appoint another in his place.

Rev., s. 4615; 1901, c. 755, s. 4.

6234. Duties of the physician; books provided. The physician shall have the same powers and perform the same duties as the superintendent of the other state hospitals, and such additional duties as may be prescribed by the board of direc-

tors, and in addition thereto he shall make a special study of penology and crime in all its aspects, and he shall make special biennial reports thereof to the board of directors for transmission to the governor and the general assembly. The board is hereby authorized to buy such books on these subjects as may be necessary, the books to be the property of the hospital.

Rev., s. 4616; 1901, c. 755, s. 5.

6235. Superintendents of other state hospitals to visit hospital and advise. It shall be the duty of the superintendents of other state hospitals to visit the hospital for the dangerous insane from time to time, and at least once a year each, for consultation and advice, and they shall report to the board of directors of the said hospital with such suggestions as they may deem proper and best for the government thereof and for the treatment of the patients, but their powers shall be advisory only. They shall be allowed only their traveling expenses, to be paid by their respective institutions.

Rev., s. 4616; 1901, c. 755, s. 5.

6236. Insane persons charged with crime to be committed to hospital. All persons who may hereafter commit crime while insane, and all persons who, being charged with crime, and are adjudged to be insane at the time of their arraignment, and for that reason cannot be put on trial for the crimes alleged against them, shall be sent by the court before whom they are or may be arraigned for trial, when it shall be ascertained by due course of law that such person is insane and cannot plead, to the hospital for the dangerous insane, and they shall be confined therein under the rules and regulations prescribed by the board of directors under the authority of this article, and they shall be treated, cared for, and maintained in said hospital like patients in other state hospitals. Their confinement in said hospital shall not be regarded as punishment for any offense: Provided, that no insane person who has been or may hereafter be committed to the state hospital at Morganton, Raleigh, or Goldsboro shall be transferred therefrom to the hospital for the dangerous insane.

Rev., s. 4617; 1899, c. 1, s. 63.

6237. Persons acquitted of certain crimes or incapable of being tried, on account of insanity, committed to hospital. When a person accused of the crime of murder, attempt at murder, rape, assault with the intent to commit rape, highway robbery, train wrecking, arson, or other crime, shall have escaped indictment or shall have been acquitted upon trial upon the ground of insanity, or shall be found by the court to be without sufficient mental capacity to undertake his defense or to receive sentence after conviction, the court before which such proceedings are had shall detain such person in custody until an inquisition shall be had in regard to his mental condition. The judge shall, at the term of court at which such person is acquitted, cause notice to be given in writing to such person and his attorney, and, if in his good judgment it be necessary, to his nearest relative, naming the day upon which he shall proceed to make an inquisition in regard to the mental condition of such person. The judge shall cause such witnesses to be summoned and examined as he may deem proper or as the person so acquitted or his counsel may desire. At such inquisition the judge

shall cause the testimony to be taken in writing and be preserved, and a copy of which shall be sent to the superintendent of the hospital for the dangerous insane to which such person is or has been committed. If upon such inquisition the judge shall find that the mental condition or disease of such person is such as to render him dangerous either to himself or other persons, and that his confinement for care, treatment, and security demands it, he shall commit such person to the hospital for dangerous insane, to be kept in custody therein for treatment and care as herein provided. Such person shall be kept therein, unless transferred under the previous provisions of this chapter, until restored to his right mind, in which event it shall be the duty of the authorities having the care of such person to notify the sheriff of the county from which he came, who shall order that he appear before the judge of the superior court of the district, to be dealt with according to law. The expense incident to such commitment and removal shall be paid by the county authorities from which such patient was sent.

Rev., s. 4618; 1899, c. 1, s. 65.

The original section was declared unconstitutional in *In re Boyett*, 136-415, but section was altered to meet the defect.

Person detained in such hospital cannot be released on habeas corpus if he is insane at time of return of writ: *In re Boyett*, 136-415.

Person committed because of insanity making him unable to conduct his defense, when restored to his right mind may be put upon his trial: *State v. Pritchett*, 106-667—and the court can have him brought from the hospital from time to time to ascertain that fact, *Ibid*. Testimony of superintendent competent evidence upon the question as to whether such insanity feigned: *Ibid*.

The power to detain under this section applies only to the serious offenses mentioned or those of like character: *State v. Craig*, 176-740. Where defendant was indicted for resisting an officer, and the jury returned a verdict of “not guilty” because defendant did not have sufficient mental capacity, the judge cannot set the verdict aside, detain defendant, and direct an inquiry as to his sanity: *Ibid*.

6238. Convicts becoming insane committed to hospital. All convicts becoming insane after commitment to the state’s prison, and the fact being certified as now required by law in the case of other insane persons, shall be admitted to the hospital herein provided for. In case of the expiration of the sentence of any convict insane person, while such person is confined to the said hospital, such person shall be kept until restored to his right mind or such time as he may be considered harmless and incurable.

Rev., s. 4619; 1899, c. 1, s. 66.

6239. Persons acquitted of crime on account of insanity; how discharged from hospital. No person acquitted of a capital felony on the ground of insanity, and committed to the hospital for the dangerous insane, shall be discharged therefrom unless an act authorizing his discharge be passed by the general assembly. No person acquitted of a crime of a less degree than a capital felony and committed to said department shall be discharged therefrom except upon an order from the governor. No person convicted of a crime, and upon whom judgment was suspended by the judge on account of insanity, shall be discharged from the said hospital except upon the order of the judge of the district or of the judge holding the courts of the district in which he was tried: Provided, that nothing in this section shall be construed to prevent such person so confined in the hos-

pitals for the dangerous insane from applying to any judge having jurisdiction for a writ of habeas corpus. No judge issuing a writ of habeas corpus upon the application of such person shall order his discharge until the superintendents of the several state hospitals shall certify that they have examined such person and find him to be sane, and that his detention is no longer necessary for his own safety or the safety of the public.

Rev., s. 4620; 1899, c. 1, s. 67.

6240. Proceedings in case of recovery of patient charged with crime. Whenever a person confined in any hospital for the insane, and against whom an indictment for crime is pending, has recovered or been restored to normal health and sanity, the superintendent of such hospital shall notify the clerk of the court of the county from which said person was sent, and the clerk will place the case against said person upon the docket of the superior or criminal court of his county for trial, and the person shall not be discharged without an order from said court. In all cases where such person confined in the hospital for the dangerous insane shall have recovered his mind, the clerk of the court of the county from which he was committed shall fix the amount of bail required for his appearance at the next term of the superior or criminal court of his county for trial, except in cases where the offense charged is a capital felony, and in this case only the judge of the superior court residing within or holding the courts of said district shall have the power to fix bail. If the person confined in the hospital for the dangerous insane, and reported sane as aforesaid, shall give the bond fixed by the clerk or judge as above provided for, he shall be discharged by the superintendent, and if he does not give the bond, he shall be transferred to the jail of the county from which he was committed. The superintendent will notify the sheriff of said county, and the sheriff will remove the person to the jail of his county. The sheriff will pay the expenses of such removal, and the county of the person's settlement will repay the sheriff for his expenses and services.

Rev., s. 4621; 1899, c. 1, s. 64.

See annotations under section 6237.

6241. Ex-convicts with homicidal mania committed to hospital. Whenever any person who has been confined in the state's prison under sentence for the felonious killing of another person, and who has been discharged therefrom at the expiration of his term of sentence, or as the result of executive clemency, shall thereafter so act as to justify the belief that he is possessed of a homicidal mania, and shall be duly adjudged insane, in accordance with the provisions of article three of this chapter, the clerk of the superior court or other officer having jurisdiction of the proceedings in which such person shall be adjudged insane may, in his discretion, commit such person to the state hospital for the dangerous insane, or to one of the other state hospitals for the insane, as authorized and provided in this chapter.

1911, c. 169, s. 1.

6242. Hospital authorities to receive and treat such patients. It shall be the duty of the duly constituted authorities of the state hospital for the dangerous insane to receive all such insane persons as shall be committed to said institution in

accordance with the provisions of the preceding section, and to properly treat and care for the same until discharged in accordance with the provisions of law governing the discharge of patients from the other state hospitals for the insane.

1911, c. 169, s. 2.

6243. Annual appropriation for maintenance. The sum of five thousand dollars annually is hereby appropriated for the hospital for the dangerous insane at the state's prison, the same to be paid out of funds belonging to the state's prison.

Rev., s. 4622; 1901, c. 755, s. 7; 1909, c. 449, s. 19.

CHAPTER 104

IMPEACHMENT

ART. 1. THE COURT.

- 6244. Senate is court of impeachment; quorum.
- 6245. Chief justice presides in impeachment of governor.
- 6246. Power of senate as a court.
- 6247. Power of presiding officer.
- 6248. Causes for impeachment.

ART. 2. PROCEDURE IN IMPEACHMENT.

- 6249. Articles of impeachment preferred.
- 6250. When president of senate impeached, another officer chosen.
- 6251. Notice given to the accused.
- 6252. Accused entitled to counsel.
- 6253. Time of hearing fixed.
- 6254. Oath administered to members.

ART. 3. EFFECT OF IMPEACHMENT.

- 6255. Accused suspended during trial.
- 6256. Manner of conviction; judgment; indictment.

ART. 1. THE COURT

6244. Senate is court of impeachment; quorum. The court for the trial of impeachments shall be the senate. A majority of the members shall be necessary to constitute a quorum.

Rev., s. 4623; Const., Art. IV, s. 3; Code, ss. 2923, 2924; 1868-9, c. 168, s. 1.

6245. Chief justice presides in impeachment of governor. When the governor of the state, or lieutenant-governor, upon whom the powers and duties of the office of governor have devolved, is impeached, the chief justice of the supreme court shall preside; and in a case requiring the chief justice to preside, notice shall be given him, by order of the senate, of the time and place fixed for the consideration of the articles of impeachment, with a request to attend; and the chief justice shall preside over the senate during the consideration of said articles upon the trial of the person impeached. But the chief justice shall not vote on any question during the trial, and shall pronounce decision only as the organ of the senate with its assent.

Rev., s. 4624; Const., Art. IV, s. 4; Code, s. 2927; 1868-9, c. 168, s. 6.

6246. Power of the senate as a court. The senate, as a court, shall have power to compel the attendance of parties and witnesses, to enforce obedience to its orders, mandates, writs, precepts, and judgments, to preserve order, to punish, in a summary way, contempts of its authority, orders, mandates, writs, precepts, or judgments, to adjourn from time to time, and to make all lawful rules and regulations which it may deem essential or conducive to the ends of justice.

Rev., s. 4626; Code, s. 2926; 1868-9, c. 168, s. 4.

6247. Power of presiding officer. The presiding officer of the senate shall have power—

1. To direct all necessary preparations in the senate chamber.
2. To make and issue by himself or by the clerk of the senate all orders, mandates, writs, and precepts authorized by law or by the senate.
3. To direct all the forms of procedure during the trial not otherwise specially provided for.
4. To decide in the first instance, without a division, all questions of evidence and incidental questions; but the same shall, on demand of one-fifth of the members present, be decided by yeas and nays.

Rev., s. 4627; Code, s. 2927; 1868-9, c. 168, s. 5.

6248. Causes for impeachment. Every officer in this state shall be liable to impeachment for—

1. Corruption or other misconduct in his official capacity.
2. Habitual drunkenness.
3. Intoxication while engaged in the exercise of his office.
4. Drunkenness in any public place.
5. Mental and physical incompetence to discharge the duties of his office.
6. Any criminal matter, the conviction whereof would tend to bring his office into public contempt.

Rev., s. 4628; Code, s. 2937; 1868-9, c. 168, s. 16.

Judge of probate is not subject to impeachment hereunder: *People v. Heaton*, 77-18.

ART. 2. PROCEDURE IN IMPEACHMENT

6249. Articles of impeachment preferred. All impeachments must be delivered by the house of representatives to the presiding officer of the senate, who shall thereupon cause proclamation to be made in the following words:

All persons are commanded to keep silence, on pain of imprisonment, while the house of representatives is exhibiting to the senate of North Carolina articles of impeachment against

After which the articles shall be exhibited, and then the presiding officer of the senate shall inform the house of representatives that the senate will take proper order on the subject of impeachment, of which due notice shall be given to the house of representatives.

Rev., s. 4630; Code, s. 2925; 1868-9, c. 168, ss. 2, 3.

6250. When president of senate impeached, another officer chosen. If the president of the senate be impeached, notice thereof shall immediately be given to the senate by the house of representatives, in order that another president may be chosen.

Rev., s. 4631; Code, s. 2935; 1868-9, c. 168, s. 14.

6251. Notice given to the accused. The senate, upon the presentation of articles of impeachment and its organization as a court, shall forthwith cause the person

impeached to appear and answer the articles exhibited, either in person or by attorney. He shall be entitled to a copy of the impeachment and have a reasonable time to answer the same.

Rev., s. 4632; Code, s. 2928; 1868-9, c. 168, s. 7.

6252. Accused entitled to counsel. The person accused is entitled on the trial of impeachment to the aid of counsel.

Rev., s. 4629; Code, s. 2929; 1868-9, c. 168, s. 8.

6253. Time of hearing fixed. When issue is joined in the trial of an impeachment the court shall fix a time and place for the trial thereof.

Rev., s. 4633; Code, s. 2930; 1868-9, c. 168, s. 9.

6254. Oath administered to members. At the time and place appointed, and before the commencement of the trial, the presiding officer of the senate shall administer to each member of the court then present, and to other members as they appear, an oath or affirmation truly and impartially to try and determine the charge in question, under the constitution and laws, according to the evidence. No member of the court shall sit or give his vote upon the trial until he shall have taken such oath or affirmation.

Rev., s. 4625; Code, s. 2931; 1868-9, c. 168, s. 10.

ART. 3. EFFECT OF IMPEACHMENT

6255. Accused suspended during trial. Every officer impeached shall be suspended from the exercise of his office until his acquittal.

Rev., s. 4634; Code, s. 2934; 1868-9, c. 168, s. 13.

6256. Manner of conviction; judgment; indictment. No person shall be convicted on an impeachment without the concurrence of two-thirds of the senators present. Upon a conviction of the person impeached, judgment may be given that he be removed from office, or that he be disqualified to hold any office of honor, trust, or profit under this state, or both. Every person convicted on impeachment shall, nevertheless, be liable to indictment and punishment according to law.

Rev., s. 4635; Code, ss. 2932, 2933, 2936; 1868-9, c. 168, ss. 11, 12, 15; see Const., Art. IV. ss. 3, 4.

CHAPTER 105

INDIANS

SEC.

6257. Cherokee Indians of Robeson County; rights and privileges.

6258. Separate privileges in schools and institutions.

6259. Chapter not applicable to certain bands of Cherokees.

6257. Cherokee Indians of Robeson County; rights and privileges. The persons residing in Robeson, Richmond, and Sampson counties, who have heretofore been known as "Croatan Indians" or "Indians of Robeson County," together with their descendants, shall hereafter be known and designated as "Cherokee Indians of Robeson County," and by that name shall be entitled to all the rights and privileges heretofore or hereafter conferred, by any law or laws of the state of North Carolina, upon the indians heretofore known as the "Croatan Indians" or "Indians of Robeson County." In all laws enacted by the General Assembly of North Carolina relating to said indians subsequent to the enactment of said chapter fifty-one of the Laws of eighteen hundred and eighty-five, the words "Croatan Indians" and "Indians of Robeson County" are stricken out and the words "Cherokee Indians of Robeson County" inserted in lieu thereof.

Rev., s. 4168; 1885, c. 51, s. 2; 1911, c. 215; P. L. 1911, c. 263; 1913, c. 123.

See *Goins v. Indian Training School*, 169-736.

6258. Separate privileges in schools and institutions. Such Cherokee indians of Robeson county and the indians of Person county, defined in the chapter Education, section 5546, shall be entitled to the following rights and privileges:

1. Separate schools, with the educational privileges provided in the chapter Education.

2. Suitable accommodations in the state hospital for the insane at Raleigh, as provided in the chapter Hospitals for the Insane, in the article entitled Organization and Management.

3. That the sheriffs, jailers, or other proper authorities of Robeson and Person counties shall provide in the common jails of said counties, and in the homes for the aged and infirm thereof, separate cells, wards, or apartments for such indians in all cases where it shall be necessary under the laws of this state to commit any of said indians to such jails or county homes.

1911, c. 215, s. 6; 1913, c. 123; P. L. 1913, c. 22.

For separate schools, see sections 5546-5551. For care of insane, see section 6154.

6259. Chapter not applicable to certain bands of Cherokees. Neither this chapter nor any other act relating to said "Cherokee Indians of Robeson County" shall be construed so as to impose on said indians any powers, privileges, rights, or immunities, or any limitations on their power to contract, heretofore enacted with

reference to the eastern band of Cherokee indians residing in Cherokee, Graham, Swain, Jackson, and other adjoining counties in North Carolina, or any other band or tribe of Cherokee indians other than those now residing, or who have since the Revolutionary War resided, in Robeson county, nor shall said "Cherokee Indians of Robeson County," as herein designated, be subject to the limitations provided in the chapter Contracts Requiring Writing, in section 989, entitled Contracts with Cherokee Indians.

1913, c. 123, s. 5.

NOTE.—For the Cherokee Indian Normal School of Robeson County, see Educational Institutions of the State, art. 6.

CHAPTER 106

INSURANCE

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- 6265. Bond of commissioner.
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- 6270. Commissioner to provide books; make inspections; compensation.
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- 6274. Authority over all insurance companies; no exemptions from license.
- 6275. Examinations to be made.
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- 6279. Commissioner to prescribe forms and furnish blanks for returns.
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- 6302. Resident agents required; discrimination.
- 6303. Agents personally liable; when.
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- 6305. Punishment for agent acting without license or violating law.
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- 6536. Appointment of trustees to hold property.
- 6537. Unauthorized wearing of badges, etc.

SUBCHAPTER I. INSURANCE DEPARTMENT**ART. 1. TITLE AND DEFINITIONS**

6260. Title of the chapter. This chapter may be cited and shall be known as the Insurance Law.

Rev., s. 4677; 1899, c. 54.

This chapter makes elaborate and minute provision for the protection of the people from imposition under the guise of insurance, real or pretended: *State v. Arlington*, 157-640.

6261. Terms defined. When consistent with the context and not obviously used in a different sense, the term "company" or "insurance company," as used in this chapter, includes all corporations, associations, partnerships, or individuals engaged as principals in the business of insurance; the word "domestic" designates those companies incorporated or formed, and with home office, in this state; and the word "foreign," when used without limitation, includes all those formed by authority of any other state or government, and whose home office is not located in this state.

Rev., s. 4678; 1899, c. 54, s. 1.

The words contemplate both incorporated and unincorporated companies: *State v. Arlington*, 157-640.

6262. Contract of insurance. A contract of insurance is an agreement by which one party for a consideration promises to pay money or its equivalent or to do some act of value to the insured upon, and as an indemnity for, the destruction, loss, or injury of something in which the other party has an interest.

Rev., s. 4679; 1899, c. 54, s. 2.

For contracts of fire insurance, see sections 6436, 6437. For contracts of life insurance, see section 6455. Accident and health insurance, see section 6477 et seq. General regulations of insurance contracts, sections 6483-6490. For indemnity contracts, section 6363.

ART. 2. INSURANCE COMMISSIONER

6263. Department established. The insurance department is hereby established as a separate and distinct department, which is charged with the execution of laws relating to insurance and other subjects placed under the department.

Rev., s. 4680; 1899, c. 54, s. 3; 1901, c. 391, s. 1.

6264. Commissioner's election and term of office. The chief officer at the insurance department shall be called the insurance commissioner. He shall be elected by the people in the manner prescribed for the election of members of the general

assembly and state officers, and the result of the election shall be declared in the same manner and at the same time as the election of state officers is now declared. His term of office begins on the first day of January next after his election, and is for four years or until his successor is elected and qualified. If a vacancy occurs during the term, it shall be filled by the governor for the unexpired term.

Rev., ss. 4680, 4681; 1907, c. 868.

6265. Bond of commissioner. The insurance commissioner, before he enters upon the execution of his official duties, must give a bond to the state in the sum of twenty-five thousand dollars, with sufficient surety, to be approved by the state treasurer, conditioned upon the faithful performance of the duties of his office during his term of office; this bond extends to the faithful execution of the office of insurance commissioner by the person elected or appointed thereto until a new election or appointment of insurance commissioner is made and a new bond given.

Rev., s. 293; 1899, c. 54, s. 55; 1905, c. 430, s. 2.

For actions on official bonds, see sections 354, 356.

6266. Seal of department. The insurance commissioner, with the approval of the governor, shall devise a seal, with suitable inscription, for his office, a description of which, with the certificate of approval by the governor, shall be filed in the office of the secretary of state, with an impression thereof, which seal shall thereupon become the seal of office of the commissioner of the insurance department. The seal may be renewed whenever necessary.

Rev., s. 4682; 1899, c. 54, s. 11.

6267. General expense allowance. This department shall be upon the same basis as the other departments of the state, and shall be furnished with messenger, stationery, stamps, and such other supplies as are provided by law for them. There shall be allowed to the department a sum of not exceeding five hundred dollars as a contingent fund, of which so much may be used by the commissioner as is necessary to pay the actual expenses of the commissioner or his deputies when engaged in departmental duties or work for the good of the department or state. These accounts are to be itemized and paid on the approval of the insurance commissioner and only for such expenses as are not otherwise provided for.

Rev., s. 4685; 1899, c. 54, s. 3; 1901, c. 391, s. 1; 1911, c. 196, ss. 1, 2; 1913, c. 135.

6268. Expense of suppressing violations of law. For expenses in seeking out, detecting, and punishing violations of this chapter the insurance commissioner may use a sum not exceeding five hundred dollars per annum. Any amounts so expended must be approved by the governor and paid by the treasurer out of any funds in the state treasury not otherwise appropriated.

Rev., s. 4686; 1899, c. 54, s. 101; 1901, c. 391, s. 8; 1903, c. 438, s. 10.

6269. Duties of commissioner. The insurance commissioner shall:

(1) See that all laws relating to the companies, associations, and orders under the insurance department are faithfully executed.

(2) Furnish to each of the companies incorporated by this state and to the attorneys or general agents of companies and associations incorporated by other

states and foreign governments, doing business in this state, printed forms for all statements required by law.

(3) On or before the tenth day of each month, and oftener should the sum to the credit of the state exceed \$20,000, pay over all taxes, licenses, and fees received during the previous month to the state treasurer.

(4) Perform all duties now imposed upon him by law in regard to the examination, supervision, and conduct of companies and associations and orders.

(5) Upon a proper application by any citizen of this state, give a statement or synopsis of the provisions of any insurance contract offered or issued to such citizen.

He may administer the oaths in the discharge of his official duty.

Rev., s. 4689; 1899, c. 54, s. 8; 1905, c. 430, s. 3.

6270. Commissioner to provide books; make inspections; compensation. The insurance commissioner shall provide all books and blanks of every kind required to carry out the provisions of the law for inspection of buildings in towns and cities, and he or his deputy shall make inspections of the cities and towns of the state. Whenever the commissioner has reason to believe that the local inspectors are not doing their duty he or his deputy shall make special trips of inspection and take proper steps to have all the provisions of law relative to the investigation of fires and the prevention of fire waste enforced. Out of the amount collected from fire insurance companies for the investigation of fires and the prevention of fire waste one-twentieth of one per cent on the premium receipts is allowed the commissioner for the extra duties required by this section.

Rev., s. 4690; 1905, c. 506, s. 6.

NOTE.—For inspections in cities and towns, see Municipal Corporations, art. 11. For fire investigations and other duties, see Fire Protection.

6271. Reports and records kept for public inspection. The insurance commissioner shall keep on file in his office, for the inspection of the public, all the reports received by him in obedience to law. He shall keep and preserve in a permanent form a record of his proceedings, including a concise statement of the result of all official examinations of companies, a report of the condition of receiverships of insolvent companies, an exhibit of the financial condition and business methods as disclosed by the official examinations of the same, or by their several statements; and such other information and comments in relation to insurance and the public interest therein as he deems fit and proper to preserve. He shall keep the records of fires and matters connected therewith as required by section 6074 of the chapter on Fire Protection, a record of the policies insuring property of the state, as required by section 6449 of this chapter, and a record of the proceedings attending the service of process on him as agent for a foreign insurance company, as required by section 6415 of this chapter.

Rev., s. 4683; 1899, c. 54, ss. 9, 77; 1907, c. 1000, s. 1.

6272. Original documents and certified copies as evidence. Every certificate, assignment, or conveyance executed by the commissioner, in pursuance of any authority conferred on him by law and sealed with his seal of office, may be used as evidence and may be recorded in the proper recording offices, in the same

manner and with like effect as a deed regularly acknowledged or proved before an officer authorized by law to take the probate of deeds; and all copies of papers in the office of the commissioner, certified by him and authenticated by his official seal, shall be evidence as the original.

Rev., s. 4684; 1899, c. 54, s. 11.

6273. Reports of commissioner to the governor and general assembly. The commissioner shall annually submit to the governor a report of his official acts, and of the condition of all insurance and other companies, associations, or orders under his department doing business in this state, with a condensed statement of their reports made to him, arranged in proper form for printing, together with a statement of the licenses, taxes, and fees received by him from such companies and paid by him to the state treasurer; and he shall biennially submit to the general assembly, through the governor, such annual reports and statements. The commissioner shall, from time to time, report to the general assembly any change which in his opinion should be made in the laws relating to insurance and other subjects pertaining to his department. On or before the first day of February of each year in which the general assembly is in session he shall make to the governor the recommendations called for in this section, to be transmitted to the general assembly, with the last annual report of this department, including receipts and disbursements; and there shall be printed by the public printer five hundred copies for the use of the commissioner and the usual number for the use of the general assembly.

Rev., ss. 4687, 4688; 1899, c. 54, ss. 6, 7, 10; 1901, c. 391, s. 2.

6274. Authority over all insurance companies; no exemptions from license. Every insurance company, association or order, as well as every bond, investment, dividend, guarantee, registry, title guarantee, debenture, or such other like company (not strictly an insurance company, as defined in the general insurance laws), must be licensed and supervised by the insurance commissioner, and must pay all licenses, taxes, and fees as prescribed in the insurance laws of the state for the class of company, association, or order to which it belongs. No provision in any statute, public or private, may relieve any company, association, or order from the supervision prescribed for the class of companies, associations, or orders of like character, or release it from the payment of the licenses, taxes, and fees prescribed for companies, associations, and orders of the same class; and all such special provisions or exemptions are hereby repealed. It is unlawful for the insurance commissioner to grant or issue a license to any company, association, or order, or agent for them, claiming such exemption from supervision by his department and release for the payment of license, fees, and taxes.

Rev., s. 4691; 1903, c. 594, ss. 1, 2, 3.

All insurance companies must be licensed and supervised by the insurance commissioner: *State v. Arlington*, 157-640.

6275. Examinations to be made. Before granting certificates of authority to an insurance company to issue policies or make contracts of insurance the commissioner shall be satisfied, by such examination and evidence as he sees fit to make and require, that the company is otherwise duly qualified under the laws of the

state to transact business therein. As often as once in three years he shall personally or by his deputy visit each domestic insurance company and thoroughly inspect and examine its affairs, especially as to its financial condition and ability to fulfill its obligations and whether it has complied with the laws. He shall also make an examination of any such company whenever he deems it prudent to do so, or upon the request of five or more of the stockholders, creditors, policyholders, or persons pecuniarily interested therein, who shall make affidavit of their belief, with specifications of their reasons therefor, that the company is in an unsound condition. Whenever the commissioner deems it prudent for the protection of policyholders in this state he shall in like manner visit and examine, or cause to be visited and examined by some competent person appointed by him for that purpose, any foreign insurance company applying for admission or already admitted to do business in this state, and such company shall pay the proper charges incurred in this examination, including the expenses of the commissioner or his deputy and the expenses and compensation of his assistants employed therein. For these purposes the commissioner or his deputy or persons making the examination shall have free access to all the books and papers of the insurance company that relate to its business, and to the books and papers kept by any of its agents, and may summon, administer oaths to, and examine as witnesses, the directors, officers, agents, and trustees of any such company, and any other persons, in relation to its affairs, transactions, and condition.

Rev., s. 4692; 1899, c. 54, s. 13.

6276. Oath required for compliance with law. Before issuing license to any insurance company to transact the business of insurance in this state, the insurance commissioner shall require, in every case, in addition to the other requirements provided for by law, that the company file with him the affidavit of its president or other chief officer that it has not violated any of the provisions of this chapter for the space of twelve months last past, and that it accepts the terms and obligations of this chapter as a part of the consideration of the license.

Rev., s. 4693; 1899, c. 54, s. 110; 1901, c. 391, s. 8.

6277. Investigation of charges. Upon complaint being filed by a citizen of this state that a company authorized to do business in the state has violated any of the provisions of this chapter, the insurance commissioner shall diligently investigate the matter, and, if necessary, examine, under oath, by himself or his accredited representative, at the head office located in the United States, the president and such other officer or agents of such companies as may be deemed proper; also all books, records and papers of the same. Before making this examination the commissioner may require the party making complaint to file with him a sufficient bond to secure any expense or cost that may be necessary in making the examination, and if the insurance company is found not guilty of a violation of this chapter, the bond is responsible for all expenses incurred by reason of such investigation; but if the company is found guilty of a violation of this chapter it is responsible for this expense.

Rev., s. 4694; 1899, c. 54, s. 111; 1903, c. 438, s. 11.

6278. Collection of expenses of examination. If any company, authorized to do business in this state under this chapter, fails or refuses to pay the expenses of

examination upon the presentation of a bill therefor by the insurance commissioner, the commissioner shall at once institute appropriate action against the company for the recovery of the same.

Rev., s. 4695; 1899, c. 54, s. 113.

6279. Commissioner to prescribe forms and furnish blanks for returns. It is the duty of the insurance commissioner to furnish blank forms for statements, which forms may be changed by him from time to time when necessary to secure full information as to the standing, condition, and such other information desired of companies under his department. The following, or such other forms as he prescribes, shall be used:

1. Return of stock companies, other than life companies.

1. State the name of company. 2. Where located. 3. When incorporated, and for what period. 4. Amount of capital. 5. Amount of capital actually paid in. 6. Cash value of real estate owned. 7. Amount loaned on mortgage on real estate. 8. Amount and description of each kind of bonds and stocks owned, with par and market value. 9. Amount loaned on collateral, with par and market value of each security pledged. 10. Amount of cash on hand. 11. Amount of gross premiums in course of collection. 12. Amount of bills receivable, not matured, taken for premiums. 13. Amount of all other property or investments. 14. All outstanding losses. 15. Amount of unearned premiums on policies in force. 16. All other liabilities and claims against the company. 17. Amount of cash received for premiums. 18. Amount of notes received for premiums. 19. Amount received for interest and rents. 20. Amount of income received from all other sources. 21. Amount paid for losses. 22. Amount paid for dividends. 23. Amount paid for expenses. 24. All other expenditures. 25. Amount of risks written, terminated, and in force, with gross premiums thereon.

2. Return of mutual companies, other than life.

1. State the name of company. 2. Where located. 3. When incorporated, and for what period. 4. Amount of guarantee capital, if any. 5. Cash value of real estate owned. 6. Amount loaned on mortgage of real estate. 7. Amount and description of each kind of stocks and bonds owned, with par and market value. 8. Loans on collateral, with par and market value of each security pledged. 9. Cash in office and in bank. 10. Gross premiums in course of collection. 11. All other loans, investments, and property. 12. Premium notes liable to assessment. 13. Amount of scrip outstanding. 14. All outstanding losses. 15. Unearned premiums. 16. Dividends declared and unpaid. 17. Borrowed money. 18. All other liabilities and claims against the company. 19. Cash received for premiums. 20. Cash received for interest and rent. 21. Premium notes received. 22. Income from all other sources. 23. Amount paid for losses. 24. Amount paid for expenses. 25. Surplus returned to policyholders. 26. All other expenditures. 27. Scrip dividends declared. 28. Amount of risks written, terminated, and in force, with gross premiums thereon.

3. Return of life insurance companies.

1. The name of the company. 2. Where located. 3. When incorporated, and for what period. 4. Amount of capital stock or guarantee fund. 5. Cash value

of real estate owned. 6. Amount loaned on mortgages of real estate. 7. Amount and description of each kind of bonds and stocks owned, with their par and market value. 8. Loans on collateral, with par and market value of each security pledged. 9. Cash in bank and in office. 10. Premium notes and loans on policies in force. 11. Outstanding and deferred premiums on policies in force. 12. All other loans, investments, and property. 13. All outstanding losses and policy claims. 14. Dividends of surplus due policyholders. 15. Forfeitures and surplus accrued, held for and to be divided to any special class of policyholders; surplus accrued in policies in force not yet distributed. 16. All other liabilities and claims against the company. 17. Cash received for premiums. 18. Cash received for interest and rents. 19. Income from all other sources. 20. Amount paid for losses and claims. 21. Dividends of surplus to policyholders. 22. Amount paid for expenses. 23. All other expenditures. 24. Number, date, amount, and kind of each outstanding policy not heretofore returned, gross premium thereon, and age of the insured. 25. Number, date, and amount of each policy which has within the year ceased to be in force, now terminated, what has been paid to the legal holder of the policy, and the age of the insured.

Rev., s. 4708; 1899, c. 54, s. 104.

6280. Annual statements to be filed with commissioner. Every insurance company, association, or order—domestic, through its officers, and foreign, through its general agent—shall file in the office of the insurance commissioner, on or before the first day of March in each year, in form and detail as the insurance commissioner prescribes, a statement showing the business standing and financial condition of such company, association, or order on the preceding thirty-first day of December, signed and sworn to by the chief managing agent or officer thereof, before the insurance commissioner or some officer authorized by law to administer oaths. The insurance commissioner shall, in December of each year, furnish to each of the insurance companies authorized to do business in the state two or more blanks adapted for their annual statements.

Rev., s. 4698; 1899, c. 54, ss. 72, 73, 83, 97, 90; 1901, c. 706, s. 2; 1903, c. 438, s. 9.

For effect of failure to comply with this section, see sections 6281, 6295, 6296.

6281. Punishment for making false statement. If any insurance company in its annual or other statement required by law shall wilfully misstate the facts, the insurance company and the person making oath to or subscribing the same shall severally be punished by a fine of not less than five hundred nor more than one thousand dollars.

Rev., s. 3493; 1899, c. 54, s. 97.

NOTE.—False oath to such statement is perjury. See Crimes, sec. 4368.

6282. Commissioner to examine statements and publish abstracts. It is the duty of the insurance commissioner to receive and thoroughly examine each annual statement required by this chapter, and, if made in compliance with the laws of this state, to publish, at the expense of the company, an abstract of the same in one of the newspapers of the state, which newspaper may be selected by the general agent making the statement, if within thirty days after the filing of the statement he notifies the insurance commissioner, in writing, of the name of the paper selected by him.

Rev., s. 4699; 1899, c. 54, s. 74; 1901, c. 391, s. 6.

6283. Certificate and reports sent to superior court clerks. The insurance commissioner shall keep on file in his office, for the inspection of the public, all the reports received by him in obedience to this chapter, and shall certify to the clerk of the superior court of each county an abstract of each annual statement at the expense of the company making the same, and receive therefor from each company the sum of four dollars: Provided, the insurance commissioner may, in lieu of said abstract, file with the clerks of the courts a copy of the advance sheets of his report or the full report, or both; and he shall also certify, at like expense, to such clerks, on the first day of each alternate month, a list of the licenses in force at such dates and those that have expired without renewal or that have been revoked, and each clerk shall file such certified abstracts and lists in stub books, to be kept for that purpose, furnished by the insurance commissioner, which books shall be open for the inspection of the public. There shall be no tax for any seal on the certificates required by this section.

Rev., s. 4700; 1899, c. 54, s. 77; 1901, c. 391, s. 6; 1903, c. 438, s. 7; 1915, c. 166, s. 9.

6284. Record of business kept by companies and agents; commissioner may inspect. All companies, agents, or brokers doing any kind of insurance business in this state must make and keep a full and correct record of the business done by them, showing the number, date, term, amount insured, premiums, and the persons to whom issued, of every policy or certificate or renewal. Information from these records must be furnished to the insurance commissioner on demand, and the original books of records shall be open to the inspection of the commissioner, his deputy or clerk, when demanded.

Rev., s. 4696; 1899, c. 54, s. 108; 1903, c. 438, s. 11.

Failure to comply is a misdemeanor, see section 6286.

6285. Commissioner may employ actuary or accountant. It is the duty of the insurance commissioner, when in his judgment it is necessary in order that he may be fully advised as to the exact financial condition of any insurance company and the manner in which its business has been or is being conducted, to employ an independent actuary to make a technical calculation of the business and policies of the company, or a skilled accountant to examine and check up the books of the company, and the services shall be paid for as other bills against the state, out of the treasury, where payment is not otherwise provided for.

1907, c. 1000, s. 2.

6286. Books and papers required to be exhibited. It is the duty of any person having in his possession or control any books, accounts, or papers of any company, order, or person licensed under this chapter, to exhibit the same to the insurance commissioner, or to any deputy, actuary, accountant, or person acting with or for the insurance commissioner. Any person who shall refuse, on demand, to exhibit the books, accounts, or papers, as above provided, or who shall knowingly or wilfully make any false statement in regard to the same, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined or imprisoned, or both, at the discretion of the court.

Rev., ss. 3494, 4697; 1899, c. 54, s. 76; 1907, c. 1000, s. 3.

ART. 3. GENERAL REGULATIONS FOR INSURANCE

6287. State law governs insurance contracts. All contracts of insurance on property, lives, or interests in this state shall be deemed to be made therein; and all contracts of insurance the applications for which are taken within the state shall be deemed to have been made within this state and are subject to the laws thereof.

Rev., s. 4806; 1899, c. 54, s. 2; 1901, c. 705, s. 1.

See *Horton v. Ins. Co.*, 122-498.

Provision that policy contract shall be governed by, subject to and construed only according to the laws of the state of New York, is void hereunder: *Blackwell v. Life Assn.*, 141-117.

This section does not apply to a policy issued prior to its passage to a citizen of this state and subsequently assigned by the insured to a citizen of another state, so as to make a summons served upon the insurance commissioner here in an action by a citizen of such other state a sufficient service, when the defendant has previously thereto withdrawn from the state and canceled its power of attorney to the commissioner: *Williams v. Life Assn.*, 145-128.

In the absence of a statute fixing the *lex loci contractus*, a foreign insurance company and the insured may fix the place of the contract to be that of the residence of the former party: *Williams v. Life Assn.*, 145-128. Where the contract of insurance is actually made in another state, the law of such state will control: *Keesler v. Ins. Co.*, 177-394. Where a guaranty company executed a bond to indemnify an insurance company in this state against default of agent in another state, it is governed by the law of this state: *Ins. Co. v. Bonding Co.*, 162-385.

Application of section to insurance contracts of fraternal benefit associations explained: *Hollingsworth v. Supreme Council*, 175-615; *Wilson v. Order of Heptasophs*, 174-628; *Williams v. Order of Heptasophs*, 172-787.

Section referred to in *Albert v. Ins. Co.*, 122-92; *Cottingham v. Ins. Co.*, 168-259; *Trust Co. v. Young*, 172-470.

6288. No insurance contracts except under this chapter. It is unlawful for any company to make any contract of insurance upon or concerning any property or interest or lives in this state, or with any resident thereof, or for any person as insurance agent or insurance broker to make, negotiate, solicit, or in any manner aid in the transaction of such insurance, unless and except as authorized under the provisions of this chapter.

Rev., s. 4807; 1899, c. 54, s. 2.

An insurance contract made by a company failing to comply with the law may be enforced against the company: *Morgan v. Fraternal Association*, 170-75; *Lea v. Ins. Co.*, 168-484; *Robinson v. Life Co.*, 163-415; *Blount v. Fraternal Association*, 163-167; *Gazzam v. Ins. Co.*, 155-330.

6289. Statements in application not warranties. All statements or descriptions in any application for a policy of insurance, or in the policy itself, shall be deemed representations and not warranties, and a representation, unless material or fraudulent, will not prevent a recovery on the policy.

Rev., s. 4808; 1901, c. 705, s. 2.

This changes the old rule as to warranties in insurance contracts, as referred to in *Follette v. Accident Association*, 110-377. See *Albert v. Ins. Co.*, 122-92; *McCarty v. Ins. Co.*, 126-820.

In an application for a policy of life insurance every fact stated will be deemed material under this section which would materially influence the judgment of the insurance company in accepting the risk or in fixing the premium rate: *Bryant v. Ins. Co.*, 147-181; *Fishplate v. Fidelity Co.*, 140-589.

An application for an insurance policy forms a part of the contract of insurance, and one who can read and has warranted the answers in his application to be true will not be heard to

say that he was ignorant of its contents, in the absence of fraud or mistake: *Cuthbertson v. Ins. Co.*, 96-480. Effect of misrepresentation as to title of insured property is to make void the policy: *Ibid.*

Under this section it is not necessary to defeat a recovery that a material misrepresentation by the applicant must in some way contribute to the loss for which indemnity is claimed: *Bryant v. Ins. Co.*, 147-181. If it is a material statement and untrue, it will defeat the policy: *Alexander v. Ins. Co.*, 150-536.

The materiality of the facts stated in the written answers in the application is for the court to decide: *Ins. Co. v. Woolen Mills*, 172-534. Whether the statement as to bodily condition was false and material is a question for the jury: *Hines v. Casualty Co.*, 172-225.

As to false statements by insured in his application for insurance, see *Fishplate v. Fid. Co.*, 140-589; *Hinton v. Ins. Co.*, 135-314; *Bryant v. Ins. Co.*, 147-181; *Bobbitt v. Ins. Co.*, 66-70; *Ins. Co. v. Woolen Mills*, 172-534; *Schas v. Ins. Co.*, 166-55; *Gardner v. Ins. Co.*, 163-367.

As to knowledge of agent that statement made was false, see *Fishplate v. Fid. Co.*, 140-589; *Grabbs v. Ins. Co.*, 125-389; *Follette v. Accident Assn.*, 110-377. Statements made to agent and omitted in the application: *Collins v. Casualty Co.*, 172-543.

* A stipulation in an automobile policy that the car shall be kept in a certain garage, except under certain conditions, is valid, and if violated will avoid the policy: *Lummus v. Ins. Co.*, 167-654.

Contract of membership in railroad relief department is not affected by this section: *Daughtridge v. R. R.*, 165-188.

Section cited in *Cottingham v. Ins. Co.*, 168-259.

6290. Stipulations as to jurisdiction and limitation of actions. No company or order, domestic or foreign, authorized to do business in this state under this chapter, may make any condition or stipulation in its insurance contracts concerning the court or jurisdiction wherein any suit or action thereon may be brought, nor may it limit the time within which such suit or action may be commenced to less than one year after the cause of action accrues or to less than six months from any time at which a plaintiff takes a nonsuit to an action begun within the legal time. All conditions and stipulations forbidden by this section are void.

Rev., s. 4809; 1899, c. 54, ss. 23, 106; 1901, c. 391, s. 8.

Statute of limitation hereunder is valid if not conflicting with some provision of law: *Parker v. Ins. Co.*, 143-340; *Dibrell v. Ins. Co.*, 110-193; *Muse v. Assurance Co.*, 108-240; *Lowe v. Accident Assn.*, 115-18; *Gerringer v. Ins. Co.*, 133-414; *Heilig v. Ins. Co.*, 152-358; *Holly v. Assurance Co.*, 170-4; *Faulk v. Mystic Circle*, 171-301. A limitation to less than one year is invalid: *Ins. Co. v. Bonding Co.*, 162-384.

The limitation is in the nature of a condition and not a statute of limitations; and that plaintiff was in prison will not excuse compliance: *Holly v. Assurance Co.*, 170-4—nor will infancy extend the time, *Heilig v. Ins. Co.*, 152-358.

Where suit was commenced within twelve months after accrual of cause of action, and a nonsuit was taken, but record does not show when nonsuit was entered, it will be presumed, in favor of court's ruling, to have appeared that it was done within six months prior to date on which this action was commenced: *Parker v. Ins. Co.*, 143-340.

Section applied to contract of surety company: *Lumber Co. v. Johnson*, 177-44.

6291. Insurance as security for a loan by the company. Where an insurance company, as a condition for a loan by such company, of money upon mortgage or other security, requires that the borrower insure either his life or that of another, or his property, or the title to his property, with the company, and assign or cause to be assigned to it a policy of insurance as security for the loan, and agree to pay premiums thereon during the continuance of the loan, whether the premium is paid annually, semiannually, quarterly, or monthly, such premiums shall not be considered as interest on such loans, nor will any loan be

rendered usurious by reason of any such requirements, where the rate of interest charged for the loan does not exceed the legal rate and where the premiums charged for the insurance do not exceed the premiums charged to other persons for similar policies who do not obtain loans.

1915, c. 8; 1917, c. 61.

6292. Companies must do business in own name. Every insurance company, foreign or domestic, must conduct its business in the state in, and the policies and contracts of insurance issued by it shall be headed or entitled only by, its proper or corporate name.

Rev., s. 4811; 1899, c. 54, s. 18.

6293. Publication of assets and liabilities; penalty for failure. When any company publishes its assets it must in the same connection and with equal conspicuousness publish its liabilities computed on the basis allowed for its annual statements; and any publications purporting to show its capital must exhibit only the amount of such capital as has been actually paid in cash. Any company or agent thereof violating the provisions of this section shall be punished by a fine of not less than fifty nor more than two hundred dollars.

Rev., ss. 3492, 4812; 1899, c. 54, ss. 18, 96.

6294. Liabilities and reserve fund determined. To determine the liability of an insurance company, other than life and real estate title insurance, upon its contracts, and thence the amount such company must hold as a reserve for reinsurance, the insurance commissioner shall take the actual unearned portion of the premiums written in its policies. In case of the insolvency of any company, the reserve on outstanding policies may, with the consent of the commissioner, be used for the reinsurance of its policies to the extent of their pro rata part thereof.

Rev., s. 4704; 1899, c. 54, s. 67; 1901, c. 391, s. 5; 1907, c. 1000, s. 4.

6295. Revocation of license of foreign company; publication of notice. If the insurance commissioner is of the opinion, upon examination or other evidence, that a foreign insurance company is in an unsound condition, or, if a life insurance company, that its actual funds, exclusive of its capital, are less than its liabilities; or that it has failed to comply with the law, or if it, its officers or agents, refuse to submit to examination or to perform any legal obligation in relation thereto, or if any foreign insurance company applies to have removed from the superior court of any county of this state to the United States circuit or district court any action instituted against it, or institutes any action at law or suit in equity in a United States court against any citizen of this state, growing out of or in any way connected with any policy of insurance issued by such insurance company, he shall revoke or suspend all certificates of authority granted to it or its agents, and shall cause notifications thereof to be published in one or more newspapers published in this state; and no new business may thereafter be done by it or its agents in this state while such default or disability continues, or until its authority to do business is restored by the commissioner.

Rev., s. 4701; 1899, c. 54, s. 14; 1901, c. 176, s. 1.

Provision as to foreign insurance company applying to remove case to federal court is constitutional and valid: *Ins. Co. v. Comrs.*, 144-442—but this has no application to the removal of a cause wherein an agent is suing the company for services rendered, *Ibid.*

6296. Revocation of license of domestic company; injunction and receiver. If, upon examination, the insurance commissioner is of the opinion that any domestic insurance company is insolvent, or has exceeded its powers, or failed to comply with any provision of law, or that its condition is such as to render its further proceeding hazardous to the public or to its policyholders, he shall revoke its license, and, if he deems it necessary, shall apply to a judge of the superior court to issue an injunction restraining it in whole or in part from further proceeding with its business. The judge may issue the injunction forthwith, or upon notice and hearing thereon, and after a full hearing of the matter may dissolve or modify the injunction or make it permanent, and may make all orders and judgments needful in the matter, and may appoint agents or a receiver to take possession of the property and effects of the company and to settle its affairs, subject to such rules and orders as the court from time to time prescribes.

Rev., s. 4702; 1899, c. 54, s. 14.

6297. Revocation of license for violation of law or impaired assets. 1. The authority of a domestic or foreign insurance company may be revoked if it violates or neglects to comply with any provision of law obligatory upon it, and whenever in the opinion of the insurance commissioner its condition is unsound, or its assets above its liabilities, exclusive of capital and inclusive of reserve or unearned premiums estimated as provided by this chapter, are less than the amount of its original capital or required unimpaired funds.

2. If the insurance commissioner is satisfied at any time that any statements made by any company licensed under this chapter are untrue, or if a general agent fails or refuses to obey the provisions of this chapter, the insurance commissioner may revoke and cancel such license.

An insurance company violating any provision of this chapter, or refusing to submit to the examination provided for in section eighteen of this chapter, when requested, forfeits its right to do business in this state for twelve months thereafter, and the insurance commissioner shall immediately revoke the license issued to such insurance company to do business in this state.

Rev., ss. 4703, 4705; 1899, c. 54, ss. 66, 75, 112; 1901, c. 391, s. 5.

6298. Agents and adjusters must procure license. Every agent or adjuster of any insurance company authorized to do business in this state shall be required to obtain annually from the insurance commissioner a license under the seal of his office, showing that the company for which he is agent or proposes to adjust is licensed to do business in this state, and that he is an agent of such company and duly authorized to do business for it. And every such agent or adjuster, on demand, shall exhibit his license to any officer or to any person from whom he shall solicit insurance.

Rev., 4706; 1899, c. 54, s. 81; 1901, c. 391, s. 7; 1903, c. 438, s. 8, c. 774; 1915, c. 109, s. 7, c. 166, s. 1.

This applies to foreign insurance companies and fraternal insurance orders doing business in the state: *State v. Arlington*, 157-640. Section referred to in *Hay v. Ins. Co.*, 167-82.

6299. Application for license. Before a license is issued to an insurance agent or adjuster in this state, the agent or adjuster and the company for which he desires to act shall apply for the license on forms to be prescribed by the insurance commissioner; and before he issues a license to such agent or adjuster, the in-

insurance commissioner shall satisfy himself that the person applying for license as an agent or adjuster is a person of good moral character, that he intends to hold himself out in good faith as an insurance agent or adjuster, and has sufficient knowledge of the business proposed to be done, that he has not wilfully violated any of the insurance laws of this state, and that he is a proper person for such position.

1913, c. 79, s. 1; 1915, c. 109, ss. 6, 7, c. 166, s. 7.

6300. Power of commissioner to revoke license. When the insurance commissioner is satisfied that any insurance agent or adjuster licensed by this state has wilfully violated any of the insurance laws of this state, or has wilfully over-insured property of any of the citizens of the state, or has wilfully misrepresented any policy of insurance, or has dealt unjustly with or wilfully deceived any citizen of this state in regard to any insurance policies, or has failed or refused to pay over to the company which he represents, or has represented, any money or property in the hands of such agent or adjuster belonging to the company, when demanded, or has in any other way become unfit for such position, the commissioner may revoke, and it shall be his duty to revoke, the license of such agent or adjuster for all the companies which he represents in this state for such length of time as he may decide, not exceeding one year. The insurance commissioner shall give to the agent or adjuster ten days notice of the revocation of such license, and shall give the reasons therefor; and the agent or adjuster shall have the right to have such revocation reviewed by any judge of the superior court of Wake county upon appeal. For the purpose of investigation under this section, the insurance commissioner shall have all the powers conferred upon him by section 6431 of this chapter.

1913, c. 79, ss. 2, 3; 1915, c. 166, s. 7.

6301. Nonresident agents forbidden; exception. No nonresident of the state shall be licensed to do business in the state, except as a special agent or organizer, and then only when he reports his business for record as North Carolina business to some general or district agent of his company in the state, or having territory within the state.

Rev., s. 4707; 1899, c. 54, s. 108; 1903, c. 438, s. 11.

6302. Resident agents required; discrimination. All business done in this state by steam-boiler, liability, accident, health, live-stock, marine, leakage, credit, plate-glass, and fidelity insurance companies shall be by their regularly authorized agents residing in the state, or transacted through applications of such agents; and all policies so issued must be countersigned by such agents. No such companies nor their agents may make any discrimination in favor of individuals or insureds, and the provisions hereafter set forth in this chapter with respect to discrimination by life insurance companies shall apply to the companies above named and their agents.

Rev., s. 4810; 1899, c. 54, ss. 107, 108; 1903, c. 438, s. 11; 1911, c. 196, s. 5; 1913, c. 140, s. 3.

NOTE.—See sec. 6458.

6303. Agents personally liable, when. An insurance agent is personally liable on all contracts of insurance unlawfully made by or through him, directly or in-

directly, for any company not authorized to do business in the state. A person or citizen of the state who fills up or signs any open policy, certificate, blank or coupon of, or furnished by, an unlicensed company, agent, or broker, the effect of which is to bind any insurance in an unlicensed company on property in this state, is the agent of such company, and personally liable for all licenses and taxes due on account of such transaction.

Rev., s. 4813; 1899, c. 54, s. 70; 1903, c. 438, s. 7.

6304. Payment of premium to agent valid; obtaining by fraud a crime. An insurance agent or broker who acts for a person other than himself in negotiating a contract of insurance is, for the purpose of receiving the premium therefor, the company's agent, whatever conditions or stipulations may be contained in the policy or contract. Such agent or broker knowingly procuring by fraudulent representations payment, or the obligation for the payment, of a premium of insurance, shall be punished by a fine of not less than one hundred nor more than five hundred dollars, or be imprisoned for not more than one year.

Rev., ss. 3486, 4814; 1899, c. 54, s. 69.

6305. Punishment for agent acting without license or violating law. If any person shall assume to act as an insurance agent or broker without license therefor as required by law, or shall act in any manner in the negotiation or transaction of unlawful insurance with a foreign insurance company not admitted to do business in this state, or as principal or agent shall violate any provisions of law contained in this chapter, the punishment for which is not provided for elsewhere, he shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred nor more than five hundred dollars for each offense.

Rev., s. 3484; 1899, c. 54, s. 94; 1907, c. 1000, s. 8.

This applies to agents of foreign fraternal insurance orders doing business in the state: *State v. Arlington*, 157-640.

6306. Agent failing to exhibit license. If any agent of any insurance company shall, on demand of any person from whom he shall solicit insurance, fail to exhibit a certificate from the insurance commissioner bearing the seal of his office, and dated within one year from such demand, he shall be fined five dollars or imprisoned ten days for each offense.

Rev., s. 3485; 1899, c. 54, s. 81.

6307. Agents making false statements. If any solicitor, agent, examining physician, or other person shall knowingly or wilfully make any false or fraudulent statement or representation in or with reference to any publication for insurance, or shall make any such statement for the purpose of obtaining fee, commission, money, or benefit in any corporation transacting business in this state, he shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment in the county jail for not less than thirty days nor more than one year, or both, at the discretion of the court.

Rev., s. 3487; 1899, c. 54, s. 60.

NOTE.—For criminal offenses connected with fraternal orders and societies, see this chapter, s. 6529.

6308. Agents signing certain blank policies. If any agent, commissioned or otherwise, of any fire, marine, health, live-stock, leakage, credit, steam-boiler, liability, accident, plate-glass, or fidelity insurance company shall sign any blank contract or policy of insurance, upon conviction thereof he shall be fined for each offense not less than one hundred dollars nor more than two hundred dollars.

Rev., s. 3488; 1899, c. 54, ss. 108, 109; 1911, c. 196, s. 6.

6309. Adjuster acting for unauthorized company. If any person shall act as adjuster on a contract made otherwise than authorized by the laws of this state, or by any insurance company or person not regularly licensed to do business in the state, or shall adjust or aid in the adjustment, either directly or indirectly, of a loss by fire on property located in this state, incurred on a contract not authorized by the laws of the state, he shall be deemed guilty of a misdemeanor and shall, upon conviction, be fined not less than two hundred dollars nor more than five hundred dollars, or imprisoned not less than six months nor more than two years, or both, in the discretion of the court.

Rev., s. 3482; 1899, c. 54, s. 114.

6310. Agent violating insurance law. If any person, either as principal or agent, or pretending to be such, shall solicit, examine, or inspect any risk, or shall examine into, adjust, or aid in adjusting any loss, or shall receive, collect, or transmit any premium of insurance, or shall do any other act in the soliciting, making, or executing any contract of insurance of any kind otherwise than the law permits, he shall be deemed guilty of a misdemeanor, and on conviction shall pay a fine of not less than two hundred dollars nor more than five hundred dollars, or be imprisoned not less than one nor more than two years, or both, at the discretion of the court.

Rev., s. 3490; 1899, c. 54, s. 115.

6311. Informer to receive half of penalty. The person, if other than the insurance commissioner or his deputy, upon whose complaint a conviction is had for violation of the law prohibiting insurance in or by foreign companies not authorized to do business in the state, or for soliciting, examining, inspecting any risk, or receiving, collecting, or transmitting any premium, or adjusting or aiding in the adjustment of a loss, under a contract made otherwise than authorized by the laws of this state, is entitled to one-half of the penalty recovered therefor.

Rev., s. 4831; 1899, c. 54, s. 93.

6312. Forms to be approved by insurance commissioner. It is unlawful for any insurance company, association, order or society doing business in this state to issue, sell, or dispose of any policy, contract, or certificate, or use applications in connection therewith, until the forms of the same have been submitted to and approved by the insurance commissioner of North Carolina, and copies filed in the insurance department.

1907, c. 879; 1913, c. 139.

This does not affect the validity of the contract, but only the manner of doing business by the company: *Blount v. Fraternal Assn.*, 163-167.

ART. 4. DEPOSIT OF SECURITIES

6313. Deposits held in trust by commissioner or treasurer. 1. *Deposits by domestic company.* The insurance commissioner or the treasurer, in their official capacity, shall take and hold in trust deposits made by any domestic insurance company for the purpose of complying with the laws of any other state to enable the company to do business in that state. The company making the deposit is entitled to the income thereof, and may, from time to time, with the consent of the insurance commissioner or treasurer, and when not forbidden by the law under which the deposit was made, change in whole or in part the securities which compose the deposit for other solvent securities of equal par value. Upon request of any domestic insurance company such officer may return to the company the whole or any portion of the securities of the company held by him on deposit, when he is satisfied that they are subject to no liability and are not required to be longer held by any provision of law or purpose of the original deposit.

2. *Deposits by foreign company.* The commissioner or treasurer may return to the trustees or other representatives authorized for that purpose any deposit made by a foreign insurance company, when it appears that the company has ceased to do business in the state and is under no obligation to policyholders or other persons in the state for whose benefit the deposit was made.

3. *Action to enforce or terminate the trust.* An insurance company which has made a deposit in this state pursuant to this chapter, or its trustees or resident managers in the United States, or the insurance commissioner, or any creditor of the company, may at any time bring an action in the superior court of Wake county against the state and other parties properly joined therein, to enforce, administer, or terminate the trust created by the deposit. The process in this action shall be served on the officer of the state having the deposit, who shall appear and answer in behalf of the state and perform such orders and judgments as the court may make in such action.

Rev., s. 4709; 1899, c. 54, s. 17; 1901, c. 391, s. 2; 1903, c. 438, s. 1; 1903, c. 536, s. 4.

6314. Deposits subject to approval and control of commissioner. The deposits of securities required to be made by any insurance company of this state shall be approved by the insurance commissioner of the state, and he may examine them at all times, and may order all or any part thereof changed for better security, and no change or transfer of the same may be made without his assent.

Rev., s. 4710; 1903, c. 536, s. 5.

6315. Deposits by foreign companies required and regulated. A foreign company, if incorporated or associated under the laws of any government or state other than the United States or one of the United States, shall not be admitted to do business in this state until, in addition to complying with the conditions by law prescribed for the licensing and admission of such companies to do business in this state, it has made a deposit with the treasurer or insurance commissioner of this state, or with the financial officer of some other state of the United States, of a sum not less than the capital required of like companies under this chapter. This deposit must be in exclusive trust for the benefit and security of

all the company's policyholders and creditors in the United States, and may be made in the securities, but subject to the limitations, specified in this chapter with regard to the investment of the capital of domestic companies formed and organized under the provisions of this chapter. The deposit shall be deemed for all purposes of the insurance law the capital of the company making it.

Rev., s. 4711; 1899, c. 54, s. 64; 1903, c. 438, s. 6.

6316. Deposits by life companies not chartered in United States. Every life insurance company organized under the laws of any other country than the United States must have and keep on deposit with some state insurance department or in the hands of trustees, in exclusive trust for the security of its contracts with policyholders in the United States, funds of an amount equal to the net value of all its policies in the United States and not less than two hundred thousand dollars.

Rev., s. 4712; 1899, c. 54, s. 56.

ART. 5. LICENSE FEES AND TAXES

6317. Commissioner to report and pay monthly. On or before the tenth day of each month the insurance commissioner shall furnish to the auditor a statement in detail of the taxes and license fees received by him under this chapter during the previous month, and shall pay to the treasurer the amount in full of such taxes and fees. The auditor may examine the accounts of the insurance commissioner and check them up with said statement.

Rev., s. 4714; 1899, c. 54, s. 82; 1901, c. 391, s. 7; 1905, c. 430, s. 4.

6318. Schedule of license fees, taxes, and charges. The insurance commissioner shall collect and pay into the state treasury fees, taxes, and charges as follows:

1. For each license issued to: a life insurance company or association, two hundred and fifty dollars; a fire insurance company or association, or to any company or association of companies operating a separate or distinct plant of agencies, two hundred dollars; an accident insurance company or association, two hundred dollars; a marine insurance company or association, two hundred dollars; a surety insurance company or association or mutual fire insurance company doing only one class of fire insurance business, one hundred dollars; a plate-glass insurance company or association, one hundred dollars; a boiler insurance company or association, one hundred dollars; a domestic mutual insurance company, fifty dollars; a domestic mutual insurance company, operating in not more than two counties, ten dollars; reciprocals or inter-insurers, fifty dollars; to a fraternal order, twenty-five dollars; a bond, investment, dividend, guarantee, registry, title guarantee or debenture company, one hundred dollars; all other insurance companies or associations, one hundred dollars. An underwriters agency, composed of two or more companies, proposing to do a reinsurance business only in the state may be licensed without a separate license for each company, upon filing with the insurance commissioner a statement of each company, the amount proposed to be assumed by them, and such other information as he may call for, showing that the companies are solvent and propose to conduct the business in a way that would be safe and fair to the citizens of the state.

2. All of said companies shall pay a tax of two and one-half per centum upon the amount of their gross receipts in this state. But if any general agent files with the insurance commissioner a sworn statement showing that at least one-fourth of the entire assets of his company are invested and maintained in bonds of this state, or of any county, city, or town of this state, or any property situate in this state and taxable therein, the tax is one per centum upon the gross receipts aforesaid, and the license fee is one-half that named above, and if the amount so invested is three-fourths of the total assets, the tax is one-fourth of one per centum and the license fee one-fourth of that named above. Companies paying the taxes levied in this section are not liable for tax on their capital stock, and no county or corporation may impose any additional tax, license, or fee. The license fees and taxes imposed in this section must be paid to the insurance commissioner, and by him paid into the state treasury, as provided by law.

3. Annually for license issued to each general agent, five dollars; to each special or district agent or manager or organizer (including seal), three dollars; to each local or canvassing agent (including seal), one dollar; but any such company having assets invested and maintained in bonds of this state or of any county, city, or town of this state, or in any property situated in this state and taxable therein, amounting to three-fourths of its total assets, shall be charged only fifty cents for such license. In case of loss or destruction of the license the insurance commissioner, for a fee of fifty cents, may certify to its issuance, giving number, date, and form, which may be used by the original party named therein in lieu of the original license. There shall be no charge for the seal affixed to such certificate or said license.

4. Annually twenty dollars for each license issued to a resident broker, authorized to procure insurance in nonadmitted companies, and also a tax of five per centum on his gross premium receipts.

5. For filing and examining statement preliminary to admission, twenty dollars; for filing and auditing annual statement, ten dollars; for filing any other papers required by law, one dollar; for each certificate of examination, condition, or qualification of company or association, two dollars; for each seal when required, one dollar; for each examination of domestic company, twenty-five dollars; for each examination of foreign company, fifty dollars; for filing charter and other papers of a fraternal order, preliminary to admission, twenty-five dollars.

6. To be paid to the publisher, for the publication of each financial statement, nine dollars.

7. The commissioner shall receive for copy of any record or paper in his office ten cents per copy sheet and one dollar for certifying same, or any fact or data from the records of his office; for making and mailing abstracts to the clerks of the superior courts in the counties of the state, four dollars; for examination of any foreign company, twenty-five dollars per diem and all expenses, and for examining any domestic company, actual expenses incurred; for the examination and approval of charters of companies, five dollars; also, to defray the expense of computing the value of the policies of domestic life insurance companies, one cent for every thousand dollars of the whole amount insured by its policies so valued.

8. He shall collect all other fees and charges due and payable into the state treasury by any company, association, order, or individual under his department.

Rev., s. 4715; 1899, c. 54, ss. 50, 68, 80, 81, 82, 87, 90, 92; 1901, c. 391, s. 7, c. 706, s. 2; 1903, c. 438, ss. 7, 8; 1903, c. 536, s. 4; 1903, cc. 680, 774; 1905, c. 588, s. 68; 1913, c. 140, s. 1; 1919, c. 186, s. 6.

Section cited: Trust Co. v. Young, 172-470; State v. Arlington, 157-640.

6319. No additional charge by counties or towns. No county or municipality may impose an additional tax, license, or fee upon any insurance company or agent.

Rev., s. 4716; 1899, c. 54, s. 79; 1901, c. 391, s. 7; 1903, c. 438, s. 8.

6320. License fees for more than one class of insurance. No insurance company admitted to do business in the state shall be authorized to transact more than one class or kind of insurance therein, unless it pays the license fees for each class. But upon the payment of the largest license fees provided in this chapter for any one business done a life insurance company may do a health business, and a fire insurance company may insure against loss or damage to property by lightning, wind, hail, or tornado, use and occupancy, and for nonoccupancy, and may insure vessels, freights, goods, money, effects, and money lent on bottomry or respondentia against the perils of the sea and other perils usually insured against by marine insurance, including risks of inland navigation and transportation; and may also insure against loss or damage by water to any goods or premises arising from leakage of sprinklers and water-pipes. No insurance company may be required to pay license fees amounting in the aggregate to more than three hundred and fifty dollars per annum.

Rev., s. 4717; 1899, c. 54, s. 65; 1901, c. 391, s. 5; 1903, c. 438, s. 6.

6321. Licenses run from April first; pro rata payment. The licenses required by this chapter shall continue for the next ensuing twelve months after April first of each year, unless revoked as provided in this chapter; but the insurance commissioner may, when the annual license tax exceeds twenty-five dollars, receive from applicants after April first so much of the license fee required by law as may be due pro rata for the remainder of the year, beginning with the first day of the current month.

Rev., s. 4718; 1899, c. 54, s. 78.

6322. Statements of gross receipts filed and tax paid. Every general agent shall, within the first thirty days of January and July of each year, make a full and correct statement, under oath of himself and of the president, secretary, or some officer at the home or head office of the company in this country, of the amount of the gross receipts derived from the insurance business under this chapter obtained from residents of this state, or on property located therein during the preceding six months, and shall, within the first fifteen days of February and August of each year, pay to the insurance commissioner the tax imposed by this chapter upon such gross receipts.

Rev., s. 4719; 1899, c. 54, s. 79; 1901, c. 391, s. 7; 1903, c. 438, s. 8.

This section is constitutional, and imposes the tax for the privilege of doing business in the state: Trust Co. v. Young, 172-470.

6323. Policyholders to furnish information. To enable the insurance commissioner the better to enforce the payment of the taxes imposed by this chapter, every corporation, firm, or individual doing business in the state shall, upon demand of the commissioner, furnish to him, upon blanks to be provided by him, a statement of the amount of all insurance held by them, giving the name of the company, number, and amount of policies and the premiums paid on each, and such other information as the commissioner calls for, or shall file an affidavit with the commissioner that all their insurance is placed in companies licensed to do business in this state.

Rev., s. 4720; 1899, c. 54, s. 79; 1901, c. 391, s. 7; 1903, c. 438, s. 8.

Section cited: *Trust Co. v. Young*, 172-470.

SUBCHAPTER II. INSURANCE COMPANIES

ART. 6. GENERAL DOMESTIC COMPANIES

6324. Application of this chapter and general laws. The general provisions of law relative to the powers, duties, and liabilities of corporations apply to all incorporated domestic insurance companies where pertinent and not in conflict with other provisions of law relative to such companies or with their charters. All insurance companies of this state shall be governed by this chapter, notwithstanding anything in their special charters to the contrary, provided notice of the acceptance of this chapter is filed with the insurance commissioner.

Rev., s. 4721; 1899, c. 54, s. 19.

6325. Extension of existing charters. Domestic insurance companies incorporated by special acts, whose charters are subject to limitation of time, shall, after the limitation expires, and upon filing statement and paying the taxes and fees required for an amendment of the charter, continue to be bodies corporate, subject to all general laws applicable to such companies.

Rev., s. 4722; 1899, c. 54, s. 20.

6326. Certificate required before issuing policies. No domestic insurance company may issue policies until upon examination of the insurance commissioner, his deputy or examiner, it is found to have complied with the laws of the state, and until it has obtained from the insurance commissioner a certificate setting forth that fact and authorizing it to issue policies. The issuing of policies in violation of this section renders the company liable to the forfeiture prescribed by law, but such policies are binding upon the company.

Rev., s. 4723; 1899, c. 54, ss. 21, 99; 1903, c. 438, s. 10.

6327. Purposes of organization. Insurance companies, associations, or orders may be formed as provided in the two next succeeding sections for any one of the following purposes:

1. *Fire and storm.* To insure against loss or damage to property by fire, lightning, wind, hail, or tornado, use and occupancy, and for nonoccupancy, upon the stock or mutual plan.

2. *Marine.* To insure, upon the stock or mutual plan, vessels, freights, goods, money, effects, and money lent on bottomry or respondentia against the perils of

the sea and other perils usually insured against by marine insurance, including risks of inland navigation and transportation.

3. *Life*. To carry on the business commonly known as life insurance on the stock or mutual plan, contract for the payment of endowments or annuities, or make and enter into such other contracts conditioned upon the continuance or cessation of human life.

4. *Sickness*. Against disablement resulting from sickness and every insurance appertaining thereto.

5. *Accident*. Against injury, disablement, or death resulting from traveling or general accident and every insurance appertaining thereto.

6. *Fidelity and surety*. Guaranteeing the fidelity of persons holding places of public or private trust, and guaranteeing the performance of contracts other than insurance policies, and guaranteeing and executing all bonds, undertakings, and contracts of suretyship. And a company is authorized to execute such bonds, undertakings, and contracts of suretyship by itself, though a statute requires two or more sureties.

7. *Plate-glass*. Upon glass against breakage.

8. *Liability*. Insuring any one against loss or damage resulting from accident to or injury, fatal or nonfatal, suffered by an employee or other person, for and which the person insured is liable.

9. *Boiler and machinery*. Upon steam boilers and upon pipes, engines, and machinery connected therewith or operated thereby, against explosion and accident and against loss or damage to life, person, or property resulting therefrom. And a company is authorized to make inspection of and to issue certificates of inspection upon such boilers, pipes, engines, and machinery.

10. *Burglary*. Against loss by burglary or theft, or both.

11. *Credit*. To carry on the business commonly known as credit insurance or guaranty, either by agreeing to purchase uncollectible debts or otherwise to insure against loss or damage from the failure of persons indebted to the insured to meet their liabilities.

12. *Sprinkler*. To insure against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers and water-pipes. And a company is authorized to make inspection of and to issue certificates of inspection upon such sprinklers and pipes.

13. *Accidents to vehicles*. To insure against loss or damage to property arising from accidents to elevators, automobiles, bicycles, and vehicles, except rolling stock of railways.

14. *Live-stock*. To insure horses and other live-stock against death and damage.

15. *Real estate title*. For the purpose of examining titles to real estate and furnishing information in relation thereto, and of insuring owners and others interested therein against loss by reason of encumbrances and defective title.

16. *Miscellaneous*. Against any other casualty authorized by the charter of the company, not included under the heads of life, fire, marine, or title insurance, which is a proper subject of insurance. No corporation so formed may transact any other business than that specified in its charter and articles of association.

Rev., s. 4726; 1899, c. 54, ss. 24, 26; 1903, c. 438, s. 1; 1911, c. 111, s. 1.

6328. Manner of creating such corporations. The procedure for organizing such corporations is as follows: The proposed incorporators, not less than ten in number, a majority of whom must be residents of the state, shall subscribe articles of association setting forth their intention to form a corporation; its proposed name, which must not so closely resemble the name of an existing corporation doing business under the laws of this state as to be likely to mislead the public, and must be approved by the insurance commissioner; the class of insurance it proposes to transact and on what business plan or principle; the place of its location within the state, and if on the stock plan, the amount of its capital stock. The words "insurance company," "insurance association," or "insurance society" must be a part of the title of any such corporation, and also the word "mutual," if it is organized upon the mutual principle. The certificate of incorporation must be subscribed and sworn to by the incorporators before an officer authorized to take acknowledgment of deeds, who shall forthwith certify the certificate of incorporation, as so made out and signed, to the insurance commissioner of the state at his office in the city of Raleigh. The insurance commissioner shall examine the certificate, and if he approves of it and finds that the requirements of the law have been complied with, shall certify such facts, by certificate on such articles, to the secretary of state. Upon the filing in the office of the secretary of state of the certificate of incorporation and attached certificates, and the payment of a charter fee in the amount required for private corporations, and the same fees to the secretary of state, the secretary of state shall cause the certificate and accompanying certificates to be recorded in his office, and shall issue a certificate in the following form:

Be it known that, whereas (here the names of the subscribers to the articles of association shall be inserted) have associated themselves with the intention of forming a corporation under the name of (here the name of the corporation shall be inserted), for the purpose (here the purpose declared in the articles of association shall be inserted), with a capital (or with a permanent fund) of (here the amount of capital or permanent fund fixed in the articles of association shall be inserted), and have complied with the provisions of the statute of this state in such case made and provided, as appears from the following certified articles of association: (Here copy articles of association and accompanying certificates). Now, therefore, I (here the name of the secretary shall be inserted), secretary of state, hereby certify that (here the names of the subscribers to the articles of association shall be inserted), their associates and successors, are legally organized and established as, and are hereby made, an existing corporation under the name of (here the name of the corporation shall be inserted), with such articles of association, and have all the powers, rights, and privileges and subject to the duties, liabilities, and restrictions which by law appertain thereto.

Witness my official signature hereunto subscribed, and the seal of the state of North Carolina hereunto affixed, this the day of, in the year (in these blanks the day, month, and year of execution of this certificate shall be inserted; and in the case of purely mutual companies, so much as relates to capital stock shall be omitted).

The secretary of state shall sign the certificate and cause the seal of the state to be affixed to it, and such certificate of incorporation and certificate of the secretary of state has the effect of a special charter and is conclusive evidence of the organization and establishment of the corporation. The secretary of state shall also cause a record of his certificate to be made, and a certified copy of this record may be given in evidence with the same effect as the original certificate.

Rev., s. 4727; 1899, c. 54, s. 25; 1903, c. 438, ss. 2, 3.

6329. First meeting; organization; license. The first meeting for the purpose of organization under such charter shall be called by a notice signed by one or more of the subscribers to the certificate of incorporation, stating the time, place, and purpose of the meeting; and at least seven days before the appointed time a copy of this notice shall be given to each subscriber, left at his usual place of business or residence, or duly mailed to his postoffice address, unless the signers waive notice in writing. Whoever gives the notice must make affidavit thereof, which affidavit shall include a copy of the notice and be entered upon the records of the corporation. At the first meeting, or any adjournment thereof, an organization shall be effected by the choice of a temporary clerk, who shall be sworn; by the adoption of by-laws; and by the election of directors and such other officers as the by-laws require; but at this meeting no person may be elected director who has not signed the certificate of incorporation. The temporary clerk shall record the proceedings until the election and qualification of the secretary. The directors so chosen shall elect a president, secretary, and other officers which under the by-laws they are so authorized to choose. The president, secretary, and a majority of the directors shall forthwith make, sign, and swear to a certificate setting forth a copy of the certificate of incorporation, with the names of the subscribers thereto, the date of the first meeting and of any adjournments thereof, and shall submit such certificate and the records of the corporation to the insurance commissioner, who shall examine the same, and who may require such other evidence as he deems necessary. If upon his examination the insurance commissioner approves of the by-laws and finds that the requirements of the law have been complied with, he shall issue a license to the company to do business in the state, as is provided for in this chapter.

Rev., s. 4728; 1899, c. 54, s. 25; 1903, c. 438, ss. 2, 3.

6330. By-laws; classification and election of directors. A domestic company may adopt by-laws for the conduct of its business not repugnant to law or its charter, and therein provide for the division of its board of directors into two, three, or four classes, and the election thereof at its annual meetings so that the members of one class only shall retire and their successors be chosen each year. Vacancies in any such class may be filled by election by the board for the unexpired term.

Rev., s. 4724; 1899, c. 54, s. 22.

6331. Power to purchase, hold, and convey real estate. Any company organized by special charter or under the provisions of the general insurance laws of this state may purchase, hold, and convey real estate for the sole purposes and in the manner herein set forth:

1. Such as is necessary for its immediate use in the transaction of its business.
2. Property mortgaged to it in good faith as security for loans previously contracted or for money due.
3. Property conveyed to it in satisfaction of debts previously contracted in the course of its dealings, or purchased at sales upon judgments, decrees, or mortgages obtained or made for such debts.
4. It is unlawful for any such incorporated company to purchase or hold real estate in any other case or for any other purpose; and such real estate acquired, and not necessary for the accommodation of the company in the convenient trans-

action of its business, shall be sold and disposed of within five years after the company has acquired title, and it is not lawful for it to hold the real estate for a longer period than that mentioned, unless it acquired such real estate prior to March sixth, one thousand eight hundred and ninety-nine, or procures a certificate from the insurance commissioner that the interest of the company will suffer materially by a forced sale of such real estate, in which event the time for the sale may be extended to such a time as the insurance commissioner directs in the certificate. Nothing contained herein prevents any insurance company from improving and conveying its real estate, notwithstanding the lapse of five years from its acquisition thereof, without having procured such certificate from the insurance commissioner.

Rev., s. 4725; 1899, c. 54, s. 22; 1903, c. 536, s. 2.

6332. Amount of capital required. The amount of capital requisite to the formation and organization of companies under the provisions of this subchapter is as follows: Companies to insure plate-glass, not less than ten thousand dollars. Companies issuing health policies, policies against damage by hail, or insuring marine risks or inland risks upon the stock plan, or insuring live-stock, not less than twenty-five thousand dollars. Companies for the purpose of transacting life or fire insurance on the stock plan, fidelity insurance, accident insurance, steam-boiler insurance, credit insurance, sprinkler insurance, and insurance against loss by accident to vehicles, not less than fifty thousand dollars; but life or accident companies on the industrial plan, issuing policies not over five hundred dollars, may be allowed to transact business with as little capital as twenty-five thousand dollars. Companies may be so formed to insure mechanics' tools and apparatus against loss by fire for an amount not exceeding two hundred and fifty dollars in a single risk, with a capital of not less than ten thousand dollars, divided into shares of the par value of ten dollars each.

Rev., s. 4729; 1899, c. 54, s. 26; 1903, c. 438, s. 4; 1907, c. 1000, s. 5; 1913, c. 140, s. 2.

6333. Capital stock fully paid in cash. The capital stock shall be paid in cash within twelve months from the date of the charter or certificate of organization, and no certificate of full shares and no policies may be issued until the whole capital is paid in. A majority of the directors shall certify on oath that the money has been paid by the stockholders for their respective shares and is held as the capital of the company invested or to be invested as required by the next succeeding section.

Rev., s. 4730; 1899, c. 54, s. 27.

6334. Investment of capital. Such capital shall be invested only as follows:

1. In first mortgage of real estate in this state.
2. In bonds of the United States or of any of the states whose bonds do not sell for less than par.
3. In the bonds or notes of any city, county, or town of this state whose net indebtedness does not exceed five per centum of the last preceding valuation of the property therein for purposes of taxation. The term "net indebtedness" excludes any debt created to provide an electric light plant and equipment, sewerage system, and a supply of water for general domestic use, and allows

credit for the sinking fund of a county, city, town, or district available for the payment of its indebtedness.

4. Any insurance company having a capital stock of more than one hundred thousand dollars may, with the consent of the insurance commissioner, after investing one hundred thousand dollars of the capital as provided in this section, invest the balance in such other securities or in such safe manner as may be approved by the commissioner.

5. Any real-estate title insurance company organized for any of the purposes set forth in article fourteen of this chapter, and having a capital stock of more than fifty thousand dollars, may, with the consent of the insurance commissioner, after investing fifty thousand dollars of the capital, as provided in this section, invest the balance thereof in abstracts of titles of property situated in one or more of the cities or counties of this state. The amount of capital so invested shall in no event exceed one-fourth of the total capital stock of such company; and no such company shall guarantee or insure in any one risk more than twenty per cent of its combined capital and surplus. If the capital stock of such company does not exceed fifty thousand dollars, it may, with the consent of the insurance commissioner, after having invested three-fourths of its capital stock as now provided by law, invest the balance thereof in abstracts of titles of property situated in one or more of the cities or counties of this state.

Rev., s. 4731; 1899, c. 54, s. 27; 1907, c. 798; 1907, c. 998; 1911, c. 32; 1913, c. 200.

NOTE.—For general power to invest in farm loan bonds, see Banks, chapter 5, volume 1.

6335. Authority to increase or reduce capital stock. The insurance commissioner shall, upon application, examine the proceedings of domestic companies to increase or reduce their capital stock, and when found conformable to law shall issue certificates of authority to such companies to transact business upon such increased or reduced capital. He shall not allow stockholders' obligations of any description as part of the assets or capital of any stock insurance company unless the same are secured by competent collateral.

Rev., s. 4732; 1899, c. 54, s. 15.

6336. Assessment of shares; revocation of license. When the net assets of a company organized under this article do not amount to more than three-fourths of its original capital, it may make good its capital to the original amount by assessment of its stock. Shares on which such an assessment is not paid within sixty days after demand shall be forfeitable and may be canceled by vote of the directors and new shares issued to make up the deficiency. If such company does not, within three months after notice from the insurance commissioner to that effect, make good its capital or reduce the same, as allowed by this article, its authority to transact new business of insurance shall be revoked by the commissioner.

Rev., s. 4733; 1899, c. 54, s. 28; 1903, c. 438, s. 4.

6337. Increase of capital stock. Any company organized under this article may issue pro rata to its stockholders certificates of any portion of its actual net surplus it deems fit to divide, which shall be considered an increase of its capital to the amount of such certificates. The company may, at a meeting called for the purpose, vote to increase the amount and number of shares of its capital stock, and to issue certificates therefor when paid in full. In whichever method the increase is made, the company shall, within thirty days after the issue of

such certificates, submit to the insurance commissioner a certificate setting forth the amount of the increase and the facts of the transaction, signed and sworn to by its president and secretary and a majority of its directors. If the insurance commissioner finds that the facts conform to the law, he shall endorse his approval thereof; and upon filing such certificate so endorsed with the secretary of state, and the payment of a fee of five dollars for filing the same, the company may transact business upon the capital as increased, and the insurance commissioner shall issue his certificate to that effect.

Rev., s. 4734; 1899, c. 54, s. 29.

6338. Reduction of capital stock. When the capital stock of a company organized under this article is impaired, the company may, upon a vote of the majority of the stock represented at a meeting legally called for that purpose, reduce its capital stock and the number of shares thereof to an amount not less than the minimum sum required by law, but no part of its assets and property shall be distributed to its stockholders. Within ten days after such meeting the company must submit to the insurance commissioner a certificate setting forth the proceedings thereof and the amount of the reduction and the assets and liabilities of the company, signed and sworn to by its president, secretary, and a majority of its directors. The insurance commissioner shall examine the facts in the case, and if they conform to law, and in his judgment the proposed reduction may be made without prejudice to the public, he shall endorse his approval upon the certificate. Upon filing the certificate so endorsed with the secretary of state and paying a filing fee of five dollars, the company may transact business upon the basis of the reduced capital as though it were original capital, and its charter shall be deemed to be amended to conform thereto, and the insurance commissioner shall issue his certificate to that effect. The company may, by a majority vote of its directors, after the reduction, require the return of the original certificates of stock held by each stockholder in exchange for new certificates it may issue in lieu thereof for such number of shares as each stockholder is entitled to in the proportion that the reduced capital bears to the original capital.

Rev., s. 4735; 1899, c. 54, s. 30.

6339. Dividends declared; liability of stockholders for unlawful dividends. No stock company organized under this article may pay a cash or stock dividend except from its actual net surplus computed as required by law in its annual statements, nor may any such company which has ceased to do new business of insurance divide any portion of its assets, except surplus, to its stockholders, until it has performed or canceled its policy obligations. No dividend shall be paid by any company incorporated in this state when its capital stock is impaired, or when such payment would have the effect of impairing its capital stock; and any dividend so paid subjects the stockholders receiving it to a joint and several liability to the creditors of said company to the extent of the dividend so paid.

Rev., s. 4736; 1899, c. 54, s. 31; 1903, c. 536, s. 3.

6340. Loans insufficiently secured. Whenever it appears by examination, as authorized by law, that an insurance company, organized under the laws of this state, holds, as collateral security for the payment of any loan, any stock, bond,

or security of whatever description, which has not a cash market value of at least twenty-five per centum more than the amount of such loan, the insurance commissioner may require the reduction of the loan or an increase of the collateral security, so that the security shall be at least twenty-five per centum in excess of the amount loaned. If the company fail to comply with this requirement within ten days after receiving written notice thereof from the commissioner, it is the duty of the commissioner to disallow the loan and to deduct the amount thereof from the assets of the company. If it appears, upon examination, that any such insurance company holds, as security for any loan, a mortgage upon real estate which is not a first lien, or that the value of the real estate is less than fifty per centum in excess of the loan which it is mortgaged to secure, the insurance commissioner may disallow the loan and deduct the amount thereof from the assets of the company holding it, after having given the company at least twenty days notice, in writing, to change or conform the loan to the requirements of this section.

Rev., s. 4737; 1903, c. 536, ss. 6, 7, 8.

ART. 7. GUARANTY FUND FOR DOMESTIC COMPANIES

6341. Guaranty fund established. Any insurance company formed as provided in the preceding article, or now existing by virtue of any of the laws of North Carolina, may establish a guaranty fund of not less than twenty-five thousand dollars nor more than two hundred thousand dollars, in the following manner: The company may receive from any person, firm, or corporation, money, bonds, or other securities, in such amount as may be agreed upon, for the purpose of providing a guaranty fund, to be used as hereinafter provided, for the payment of the claims of policyholders. Upon the receipt of such bonds, money, or other securities by any insurance company, it shall issue its certificate, in writing, authenticated as required by law for certificates of stock, stating the amount, terms, and conditions of repayment of such money or the return of such bonds or other securities, the name of the payee or depositor, and the certificate shall also state upon its face that it is issued under the provisions of this section. The money, bonds, or other securities, when so paid to or deposited with such insurance company, becomes a part of the guaranty fund of the company, and are liable for all the claims of policyholders after the general assets of the company have been exhausted. This guaranty fund is not liable for the claims or debts due to stockholders or the general creditors of such insurance company. No insurance company shall create a guaranty fund, as provided in this article, except upon the approval of a majority of its stockholders authorized at any regular or special meeting called for the purpose.

1909, c. 922, s. 1.

6342. Separate accounts; application of fund. Every insurance company which establishes a guaranty fund under the provisions of this article must keep a separate account of the same on its books, together with a full and true list of any securities held therefor. The money and securities belonging to the guaranty fund must be invested in the same manner as is now provided by law for the investment of the other assets of insurance companies; but any bond or other

securities received by any such insurance company as a part of its guaranty fund may be deposited with the insurance commissioner, as is now allowed by law, subject to the further provisions of this article. An insurance company receiving said money or securities as a part of its guaranty fund, as herein provided, may pay to the person, firm, or corporation from whom the same is received a semi-annual dividend of not more than three and one-half per cent on the amount of said money or securities. The guaranty fund herein provided for shall be applied to the payment of claims of policyholders only when the insurance company has exhausted its cash on hand and the invested assets, exclusive of uncollected premiums; and when the guarantee is in any way impaired the directors may make good the whole or any part of such impairment by assessment upon the contingent funds of the company at the date of such impairment, if any are available.

1909, c. 922, s. 1.

6343. Reduction or retirement of fund. The guarantee fund shall be retired when the permanent fund of the company equals two per centum of the amount insured upon all policies in force; and such guarantee fund may be reduced or retired by vote of the directors of the company and the assent of the insurance commissioner, if the net assets of the company above the reinsurance reserve and all other claims and obligations, exclusive of the guaranty fund, for two years immediately preceding and including the date of its last annual statement, are not less than twenty-five per centum of the fund. Due notice of this proposed action on the part of the directors of the company must be mailed to each director of the company not less than thirty days before the meeting when such action may be taken, and must also be advertised in two newspapers of general circulation, to be approved by the insurance commissioner, not less than twice a week for a period of not less than four weeks before the meeting. No insurance company with a guaranty fund, as hereinbefore provided, which has ceased to do new business, may return or retire any part of the guaranty fund or divide to its stockholders any part of its general assets, except incomes from its investments, until it shall have performed, reinsured, or canceled its policy obligations.

1909, c. 922, s. 1.

6344. Insolvency; return of fund. In the event of insolvency or voluntary liquidation of any such insurance company, the amount of the guaranty fund shall be returned to the persons, firms, or corporations, their heirs, executors, administrators, successors, or assigns, from which the same was received, in full or pro rata, as the case may be, before any amount shall be paid from the assets of said company to its stockholders. The intention of this section is that the liability of the company for the repayment or the return of its guaranty fund, as evidenced by its certificates therefor, as hereinbefore provided, shall be preferred in the distribution of its assets to the stockholders and general creditors of the company, other than its policy obligations.

1909, c. 922, s. 1.

6345. Conversion to guaranty fund. Any insurance company now doing business as a domestic insurance company under the laws of this state which has received any money or securities to be held as a guaranty capital, guaranty surplus, or guaranty fund, may convert the same into a guaranty fund, as hereinbefore provided, by mutual agreement between the board of directors of the insurance

company and the parties from whom the money or securities have been received, subject, however, to the approval of the insurance commissioner, and thereupon certificates shall be issued therefor, as hereinbefore provided, and the same shall thereafter be held subject to the rights and liabilities provided in this article.

1909, c. 922, s. 2.

ART. 8. MUTUAL INSURANCE COMPANIES

6346. Mutual fire insurance companies organized; requisites for doing business.

Mutual fire insurance companies may be formed under this article, but no policy may be issued by a purely mutual fire insurance company, or by a mutual fire insurance company with a guaranty capital of less than fifty thousand dollars, until not less than two hundred thousand dollars of insurance, in not less than two hundred separate risks upon property located in North Carolina, has been subscribed for and entered on its books; but in the formation of mutual fire insurance companies to operate in no more than two counties of this state, whether town or farmers' mutuals, the requirement as to amount of insurance shall be twenty-five thousand dollars in risks owned by at least twenty-five adult residents of such towns or counties; but where there is an association or corporation for the purpose of interinsurance or mutual protection between members of said association or corporation, which members or stockholders are engaged in the same line of business, the requirement shall be fifty instead of two hundred separate risks. No policy may be issued under this section until the president and the secretary of the company have certified under oath that every subscription for insurance in the list presented to the insurance commissioner for approval is genuine, and made with an agreement with every subscriber for insurance that he will take the policies subscribed for by him within thirty days after the granting of a license to the company by the insurance commissioner to issue policies.

Rev., s. 4738; 1899, c. 54, ss. 25, 32, 34; 1901, c. 391, s. 3; 1903, c. 438, s. 4; 1911, c. 93.

NOTE.—False oath to certificate is perjury. See Crimes, sec. 4371.

6347. Assessments kept in treasury; certain officers debarred from commissions.

Every mutual or assessment company or association organized or doing business in the state on the assessment plan shall keep in its treasury at least one assessment sufficient to pay one average loss. No officer or other person whose duty it is to determine the character of the risk, and upon whose decision the application shall be accepted or rejected by a mutual fire insurance company, shall receive as any part of his compensation a commission upon the premiums, but his compensation shall be a fixed salary and such share in the net profits as the directors may determine. Nor shall such officer or person be an employee of any officer or agent of the company.

Rev., s. 4738; 1899, c. 54, s. 32; 1903, c. 438, s. 4.

6348. Policyholders are members of mutual fire companies. Every person insured by a mutual fire insurance company is a member while his policy is in force, entitled to one vote for each policy he holds, and must be notified of the time and place of holding its meetings by a written notice or by an imprint upon the back of each policy, receipt, or certificate of renewal, as follows:

The insured is hereby notified that by virtue of this policy he is a member of the insurance company, and that the annual meetings of the company are held at its home office on the day of, in each year, at o'clock.

The blanks shall be duly filled in print and are a sufficient notice. A corporation which becomes a member of such company may authorize any person to represent it, and this representative has all the rights of an individual member. A person holding property in trust may insure it in such company, and as trustee assume the liability and be entitled to the rights of a member, but is not personally liable upon the contract of insurance. Members may vote by proxies, dated and executed within three months, and returned and recorded on the books of the company three days or more before the meeting at which they are to be used; but no person as proxy or otherwise may cast more than twenty votes.

Rev., s. 4739; 1899, c. 54, s. 33.

6349. Directors in mutual fire companies. Every mutual fire insurance company shall elect by ballot a board of not less than seven directors, who shall manage and conduct its business and hold office for one year or for such term as the by-laws provide and until their successors are qualified. Two-thirds at least of the directors must be citizens of the state, and after the first election members only are eligible, but no director is disqualified from serving the term he was chosen for by reason of the expiration or cancellation of his policy. In companies with a guaranty capital, one-half of the directors shall be chosen by and from the stockholders.

Rev., s. 4739; 1899, c. 54, s. 33.

6350. Mutual fire companies with a guaranty capital. A mutual fire insurance company formed as provided in this article, or a mutual fire insurance company now existing, may establish a guaranty capital or surplus of not less than twenty-five thousand dollars nor more than two hundred thousand dollars, divided into shares of one hundred dollars each, which shall be invested in the same manner as is provided in this subchapter for the investment of the capital stock of certain insurance companies. The stockholders of the guaranty capital of a company or owners of guaranty surplus are entitled to a semiannual dividend of not more than three and one-half per centum on their respective shares, if the net profits or unused premiums left after all expenses, losses, and liabilities then incurred, together with the reserve for reinsurance, as provided for, are sufficient to pay the same. The guaranty capital or surplus shall be applied to the payment of losses only when the company has exhausted its cash in hand and the invested assets, exclusive of uncollected premiums, and when thus impaired, the directors may make good the whole or any part of it by assessments upon the contingent funds of the company at the date of such impairment. Shareholders and members of such companies are subject to the same provisions of law in respect to their right to vote as apply respectively to shareholders in stock companies and policyholders in purely mutual companies. This guaranty capital or surplus shall be retired when the permanent fund of the company equals two per centum of the amount insured upon all policies in force, and may be reduced or retired by vote of the policyholders of the company and the assent of the insurance commissioner, if the net assets of the company above its reinsurance reserve and all other claims and obligations, exclusive of guaranty capital or surplus, for two years immediately preceding and including the date of its last annual statement, is not less than twenty-five per centum of the guaranty capital or surplus. Due notice of such proposed action on the part of the company must be mailed to each

policyholder of the company not less than thirty days before the meeting when the action may be taken, and must also be advertised in two papers of general circulation, approved by the insurance commissioner, not less than three times a week for a period of not less than four weeks before such meeting. No insurance company with a guaranty capital or surplus, which has ceased to do new business, shall divide to its stockholders any part of its assets or guaranty capital or surplus, except income from investments, until it has performed or canceled its policy obligations.

Rev., s. 4740; 1899, c. 54, s. 34; 1911, c. 196, s. 3.

6351. Dividends and assessments; liability of policyholders. The directors of a mutual fire insurance company may from time to time by vote fix and determine the amount to be paid as a dividend upon policies expiring during each year. Each policyholder is liable to pay his proportional share of any assessments which are made by the company in accordance with law and his contract on account of losses incurred while he was a member, if he is notified of such assessments within one year after the expiration of his policy. Any mutual fire insurance company doing business with a fixed annual premium may in its by-laws and policies fix the contingent liability of its members for the payment of losses and expenses not provided for by its cash funds; but this contingent liability of a member must not be less than a sum equal to five times the cash premiums written in his policy and in addition thereto. The total amount of the liability of the policyholder must be plainly and legibly stated upon the back of each policy. Whenever any reduction is made in the contingent liability of members, it applies proportionally to all policies in force.

Rev., s. 4741; 1899, c. 54, s. 35.

6352. Guaranty against assessments prohibited. If any director or other officer of a mutual fire insurance company, either officially or privately, shall give a guarantee to a policyholder thereof against an assessment to which such policyholder would otherwise be liable, he shall be punished by a fine not exceeding one hundred dollars for each offense.

Rev., s. 3496; 1899, c. 54, s. 100.

6353. Manner of making assessments; rights and liabilities of policyholders. When a mutual fire insurance company is not possessed of cash funds above its reinsurance reserve sufficient for the payment of insured losses and expenses, it must make an assessment for the amount needed to pay such losses and expenses upon its members liable to assessment therefor in proportion to their several liabilities. The company shall cause to be recorded in a book kept for that purpose the order for the assessment, together with a statement which must set forth the condition of the company at the date of the order, the amount of its cash assets and deposits, notes, or other contingent funds liable to the assessment, the amount the assessment calls for, and the particular losses or liabilities it is made to provide for. This record must be made and signed by the directors who voted for the order before any part of the assessment is collected, and any person liable to the assessment may inspect and take a copy of the same. When, by reason of depreciation or loss of its funds or otherwise, the cash assets of such company, after providing for its other debts, are less than the required premium reserve

upon its policies, it must make good the deficiency by assessment in the manner above provided. If the directors are of the opinion that the company is liable to become insolvent they may, instead of such assessment, make two assessments, the first determining what each policyholder must equitably pay or receive in case of withdrawal from the company and having his policy canceled; the second, what further sum each must pay in order to reinsure the unexpired term of his policy at the same rate as the whole was insured at first. Each policyholder must pay or receive according to the first assessment, and his policy shall be canceled unless he pays the sum further determined by the second assessment, in which case his policy continues in force; but in neither case may a policyholder receive or have credited to him more than he would have received on having his policy canceled by a vote of the directors under the by-laws.

Rev., s. 4742; 1899, c. 54, ss. 36, 37.

Courts seek to sustain and enforce contracts of mutual insurance companies by looking to the substance and intention rather than by adopting a technical or strained construction: *Perry v. Ins. Assn.*, 139-374.

Where members of mutual companies have enjoyed its protection, they cannot, after a loss has been sustained, withdraw and refuse to pay their portion of loss: *Ibid.*

Right of each member is to have assessment made to pay his loss, and he has no claim upon amount paid to another policyholder: *Ibid.*

Plaintiff may, by a motion in the cause in which he obtained judgment, have an order directed to defendant corporation to have assessment made according to its charter and by-laws, and the court has power to enforce its performance: *Ibid.*

All contracts and by-laws of an incorporated society are made with reference to the general law, and they must conform to certain general requirements in respect to vested personal and property rights of members: *Sherrod v. Ins. Assn.*, 139-167.

An acceptance of an overdue assessment by a fire insurance company, after property insured is burned, the company having notice thereof, is a waiver of the forfeiture of the policy: *Perry v. Ins. Co.*, 132-283.

6354. Mutual life and health companies. Life and health insurance companies and associations organized in this state to do business on the mutual plan shall be governed as to the commencement of business, election of members, guaranty capital, dividends, and assessments as provided in this article for mutual fire insurance companies, where applicable.

Rev., s. 4743; 1903, c. 536, s. 1.

6355. Dividends on, and redemption of, guaranty capital of life companies. The stockholders of the guaranty capital of any domestic life insurance company are entitled to such annual dividends not exceeding eight per centum, payable from the net surplus, as have been agreed upon in the subscription thereof. Such company may redeem its guaranty capital by appropriation of net surplus for that purpose whenever its members so vote.

Rev., s. 4744; 1899, c. 54, s. 58; 1903, c. 438, s. 5.

ART. 9. ASSESSMENT COMPANIES

6356. Copies of charter and by-laws filed. Every corporation, society, or organization of this or any other state or country, transacting business under this department upon the coöperative or assessment plan, must file with the insurance commissioner, before beginning to do business in this state, a copy of its charter or articles of association, and the by-laws, rules, or regulations referred to in its policies or certificates and made a part of such contract. By-laws or regulations

not so filed with the insurance commissioner will not avoid or affect any policy or certificate issued by such company or association.

Rev., s. 4790; 1899, c. 54, s. 86.

As to by-laws with reference to payment of assessments, as to suspension for failure to pay, and as to reinstatement, see *Clifton v. Ins. Co.*, 168-499; *Hay v. Assn.*, 143-256, and cases cited; also *Lane v. Ins. Co.*, 142-55; *Duffy v. Ins. Co.*, 142-103; *Riddick v. Ins. Co.*, 132-118; *French v. Life Assn.*, 111-391. Effect of accepting payment of assessment after it should have been paid, see *Hay v. Assn.*, 143-256.

By-law that notice of assessment may be given by mail, properly addressed, is valid and binding on members: *Duffy v. Ins. Co.*, 142-103—but by-law that certificate of treasurer, etc., is conclusive of the mailing is invalid, *Ibid.*

Plaintiff can show he did not receive notice, notwithstanding defendant properly postpaid and addressed the same: *Sherrod v. Ins. Assn.*, 139-167.

As to general force of by-laws, see *Duffy v. Ins. Co.*, 142-103. Whether by-law is reasonable is a question for the court: *Ibid.*

Section merely referred to in *Brenizer v. Royal Arcanum*, 141-418.

6357. Contracts must accord with charter and by-laws. Every policy or certificate or renewal receipt issued to a resident of this state by any corporation, association, or order transacting therein the business of insurance upon the assessment plan must be in accord with the provisions of the charter and by-laws of such corporation, association, or order, as filed with the insurance commissioner. It is unlawful for any such domestic or foreign insurance company or fraternal order to transact or offer to transact any business not authorized by the provisions of its charter and the terms of its by-laws, or, through an agent or otherwise, to offer or issue any policy, renewal certificate, or other contract whose terms are not in clear accord with the powers, terms, and stipulations of its charter and by-laws.

Rev., s. 4791; 1899, c. 54, s. 84; 1903, c. 438, s. 9.

Section cited: *Hollingsworth v. Supreme Council*, 175-615.

6358. "Assessment plan" printed on application and policy. Every policy or certificate issued to a resident of the state by any corporation transacting in the state the business of life insurance upon the assessment plan, or admitted to do business in this state on the assessment plan, shall print in bold type and in red ink, near the top of the front page of the policy, upon every policy or certificate issued upon the life of any such resident of the state, the words "issued upon the assessment plan"; and the words "assessment plan" shall be printed conspicuously in red ink in and upon every application, circular, card, and any and all printed documents issued, circulated, or caused to be circulated by such corporation within the state, save and except, however, in advertising in newspapers within the state, in which case the words may be printed in black.

1913, c. 159, s. 1.

6359. Revocation for noncompliance. If any corporation or association transacting insurance business in this state on the assessment plan or issuing any policy upon the life of a resident of North Carolina upon the assessment plan shall fail or refuse to comply with the foregoing section, the insurance commissioner shall forthwith suspend or revoke all authority of such corporation or association and of its agents to do business in this state.

1913, c. 159, s. 2.

6360. Deposits and advance assessments required. Every domestic insurance company, association, order, or fraternal benefit society doing business on the assessment plan shall collect and keep at all times in its treasury one regular loss assessment sufficient to pay one regular average loss; and no such company, association, order, or fraternal benefit society shall be licensed by the insurance commissioner unless it makes and maintains with him for the protection of its obligations at least five thousand dollars in United States or North Carolina bonds, in farm loan bonds issued by federal loan banks, or in the bonds of some city, county, or town of North Carolina to be approved by the insurance commissioner, or deposit with him a good and sufficient bond, secured by a deed of trust on real estate situate in North Carolina and approved by him; but this shall not apply to companies, associations, or orders doing business in not more than two adjacent counties. Such companies, associations, orders, or societies now doing business in this state and not issuing policies or certificates for more than two hundred dollars, shall be permitted to deposit five hundred dollars on the first day of July, one thousand nine hundred and thirteen, and five hundred dollars each six months thereafter until the required amount is deposited; and the last named association when hereafter organized may be allowed by the insurance commissioner to make such deposit in like installments. The insurance commissioner may increase the amount of deposit to the amount of reserve on the contracts of the association or society.

Rev., s. 4792; 1913, c. 119, s. 1; 1917, c. 191, s. 2.

Section referred to in *Brenizer v. Royal Arcanum*, 141-418; *Hollingsworth v. Supreme Council*, 175-615.

6361. Deposits by foreign assessment companies or order. Each foreign insurance company, association, order, or fraternal benefit society doing business in this state on the assessment plan shall keep at all times deposited with the insurance commissioner or in its head office in this state, or in some responsible banking or trust company, one regular assessment sufficient to pay the average loss or losses occurring among its members in this state during the time allowed by it for the collection of assessments and payment of losses. It shall notify the insurance commissioner of the place of deposit and furnish him at all times such information as he requires in regard thereto; and no such company, association, order, or fraternal benefit society shall be licensed by the commissioner unless it makes and maintains with him for the protection of its obligations at least five thousand dollars in United States or North Carolina bonds, in farm loan bonds issued by federal land banks, or in the bonds of some county, city, or town in North Carolina to be approved by the insurance commissioner, or a good and sufficient bond or note, secured by deed of trust on real estate situate in North Carolina, and approved by the commissioner. The provisions of this section do not apply to associations, orders, or fraternal benefit societies operating in not more than two adjacent counties in the state and paying a benefit of not exceeding two hundred dollars, but the amount to be deposited by said societies is within the discretion of the insurance commissioner, but must be not less than one hundred dollars.

Rev., s. 4713; 1899, c. 54, s. 84; 1903, c. 438, s. 9; 1913, c. 119, ss. 2, 3; 1917, c. 191, s. 2.

6362. Revocation of license. If any such corporation, association, or order at any time fails to comply with the provisions of the two next preceding sections or shall issue policies or certificates not in accord with its charter and by-laws, as provided in this article, the insurance commissioner shall forthwith suspend or revoke all authority to it, and of all its agents or officers, to do business in this state, and shall publish such revocation in some newspaper published in this state.

Rev., s. 4793; 1899, c. 54, s. 85.

Section cited: *Hollingsworth v. Supreme Council*, 175-615.

ART. 10. BOND AND INVESTMENT COMPANIES

6363. License required; amount of capital stock. Before any bond, investment, dividend, guarantee, registry, title guarantee, debenture, or other like company (not strictly an insurance company as defined in this chapter), or any individual, corporation, or partnership who, by agents, offers for sale or sells the stocks, bonds, or obligations of any foreign corporation, whether organized or to be organized or being promoted, may be authorized to do business in this state, such company, individual, or partnership must be licensed by the insurance commissioner; and the commissioner is authorized to issue such license when he is satisfied that such company or corporation is safe and solvent, and has complied with the laws of this state applicable to fidelity companies and governing their admission and supervision by the insurance department. If such company is chartered and organized in this state and has its home office within the state, and is solvent to the extent of at least fifteen thousand dollars, it may, if a stock company, commence business with a capital stock of twenty-five thousand dollars. The license issued to such companies and their agents shall be issued and paid for as provided for those of insurance companies. This section shall apply also to every corporation, company, co-partnership, or association organized or to be organized in this state where such company or organization by its organizers or promoters puts or proposes to put the stock of the company on the market in person or by agents.

Rev., s. 4805; 1899, c. 54, s. 87; 1901, c. 706, s. 2; 1911, c. 196, s. 4; 1919, c. 121.

Guaranty and surety company included under this section: *Lumber Co. v. Johnson*, 177-44. **Insurance against mercantile loss, or credit insurance policy construed:** *Grocery Co. v. Casualty Co.*, 157-116.

Where there is an indemnity contract to insure the employer against loss for injury to the employee, the injured employee cannot proceed directly against insurance company in the first instance: *Newton v. Seeley*, 177-528.

Insurer is not liable for failure to compromise a claim when a judgment is afterwards recovered for a larger amount: *Lumber Co. v. Ins. Co.*, 173-269.

Denial of liability is a waiver of notice to defend an action brought; but the plaintiff cannot maintain an action, under the terms of the contract, until he has paid the loss: *Lowe v. Fidelity and Casualty Co.*, 170-445. **Construction of indemnity policy with reference to exceptions limiting liability:** *Cotton Mills v. Assurance Co.*, 161-562.

This section does not require service of summons upon insurance commissioner: *Pardue v. Absher*, 174-676.

This section and the following sections in this article, known as the "Blue Sky Law," are held to be a valid exercise of police power, the "investment" in this case being "fig orchards": *State v. Agey*, 171-831.

6364. Foreign companies subject to regulation of this article. Every corporation, partnership, or association, all of which are in this article termed company, organized, proposed to be organized, or which shall hereafter be organized, with-

out this state, whether incorporated or unincorporated, which shall in this state sell, or negotiate for sale, any stocks, bonds, or other evidences of property or interest in itself or any other company, all of which are in this article termed securities, upon which sale or proposed sale the whole or any part of the proceeds are used, or to be used, directly or indirectly, for the payment of any commission or other expenses incidental to the organization or promotion of any such company, shall be subject to this article.

1913, c. 156, s. 1 (1).

See *State v. Agey*, 171-831.

6365. Documents to be filed with commissioner; license issued. Before offering or attempting to sell any such securities to any person or persons, doing or offering to do any business whatever in this state, excepting that of preparing the documents hereinafter required, every such company shall file in the office of the insurance commissioner of this state, together with the fees prescribed for fidelity companies, the following documents, to wit: A statement showing in full detail the plan upon which it proposes to transact business; a copy of all applications for and forms of contracts, securities, bonds, or other instruments, which it proposes to make with or sell to its contributors; a statement which shall show the name, location, and head office of the company and an itemized account of its actual financial condition, and the amount of its property and liabilities, and such other information, and in such form, touching its affairs as said officer may require. It shall also file with the insurance commissioner a copy of the laws of such state, territory, or government under which it exists or is incorporated, and also a copy of its charter of its home state and certificate of the proper officer of such state that it is authorized to do business therein, articles of incorporation, constitution, and by-laws, and all amendments thereof which have been made, and all other papers pertaining to its organization. Before doing business in this state it must be licensed by the insurance commissioner, which the commissioner is authorized to do when he is satisfied that such company or corporation is safe and solvent, and has complied with the laws of this state applicable to fidelity companies and governing their admission and supervision by the insurance department.

1913, c. 156, s. 1 (2).

6366. Advertising matter regulated. No advertisement, pamphlet, circular, or other document shall be issued, circulated, or delivered by such company or its agent, within this state, unless the same shall bear a serial number, and a copy thereof shall first have been filed with the insurance commissioner, nor after such company has been notified of objection thereto by said officer.

1913, c. 156, s. 1 (3).

6367. Contract in writing; stipulations required. No person, for the purpose of organizing or promoting any company, or promoting the sale of securities of such company by it after organization, as principal or agent, shall sell or agree or attempt to sell within this state any securities in such company unless the contract of subscription or of sale shall be in writing and contain a provision in the following language:

“No sum shall be used for commission, promotion, and organization expenses on account of any share of stock in this company in excess of one per cent of the

amount actually paid upon separate subscriptions (or in lieu thereof may be inserted, or one dollar per share from every fully paid subscription) for such securities, and the remainder of such securities shall be held or invested as authorized by the law governing such company and held by the organizers (or trustees as the case may be), and the directors and officers of such company after organization, as bailees for the subscriber, to be used only in the conduct of the business of such company after having been licensed and authorized therefor by proper authority."

1913, c. 156, s. 1 (4).

6368. Funds deposited until license granted. Funds and securities held by such organizers, trustees, directors, or officers as bailees shall be deposited with any bank or trust company of this state until such company has been licensed to do business.

1913, c. 156, s. 1 (4).

6369. Name of person interested to appear in contract. No person shall participate in, receive, or accept any part or promise of any part of any of the commissions or rewards of any organizer, promoter, or agent for the sale of any such securities, unless the name of such person and the fact of his interest in such commissions or rewards shall appear upon such contract of subscription. The omission of such statement from any such contract shall, in addition to the penalty herein provided, make such person liable to the purchaser or his assignees for all sums paid by such purchasers, with interest at the legal rate from date of payment, upon the assignment or tender of assignment of the securities so purchased.

1913, c. 156, s. 1 (5).

6370. Examination by commissioner; license. The insurance commissioner has power to make examination of said company at its expense, including actual expenses and the per diem of examiners twenty-five dollars, and to require such further information as he may deem advisable, and if he shall find that the provisions of the law have been complied with, and is satisfied that the company is safe and solvent, and that its business is proper and legitimate and is so conducted, he may license the company to transact business in the state upon the payment of a license fee of one hundred dollars; and no such company or representative thereof shall transact or offer to transact business within this state unless a license has been issued to it to do so. The license shall recite in bold type that the insurance commissioner in no wise recommends the securities to be offered for sale by such company.

1913, c. 156, s. 1 (6).

6371. Changes in organization or plans filed with commissioner. No such company shall transact, or offer to transact, any business within this state during any time after the adoption of any change in its articles of organization, by-laws, or plan of doing business, or the making of any change in the form of its applications, or other contracts, before the same shall have been filed with the insurance commissioner.

1913, c. 156, s. 1 (7).

6372. Agents must be licensed; bond required. No person shall transact or offer to transact business in this state as agent for such company, or transact or offer to transact any business described in this article unless such person shall hold a license issued by the insurance commissioner. The license shall issue only upon the filing with the insurance commissioner by such agent of a bond in the sum of one thousand dollars (\$1,000), with such conditions and sureties as may be required and approved by the insurance commissioner. The license shall expire on the first day of April following, unless the authority is sooner revoked by the insurance commissioner, and such authority shall be subject to revocation at any time by such officer for cause appearing to him sufficient. The fee for such agent's license shall be the same as prescribed for fidelity companies.

1913, c. 156, s. 1 (8).

See *State v. Agey*, 171-831.

6373. Statements filed; accounts kept. Every company shall, on or before the first day of March, file with the insurance commissioner a statement as of the thirty-first day of December preceding, in such form as required by him, and such other statements and information shall be filed in such form and within such time as may be required by the commissioner. The accounts of such company shall be kept in such form as required by the commissioner.

1913, c. 156, s. 1 (9).

6374. Revocation of license. No such company shall fail to comply with any provision of the law or any requirement of the insurance commissioner pursuant to the law, and no officer, agent, or employee of any such company shall make or cause to be made any false statement in any report required of him, or a false entry in any book of such company, or shall make or publish any false statement of its condition or regarding its securities; and upon any violation of this section the insurance commissioner may revoke its license to do business in this state.

1913, c. 156, s. 1 (10).

6375. Punishment for violation. Any officer or agent of such company knowingly or wilfully violating any of the provisions of this article shall be punished by a fine not exceeding two hundred dollars, or by imprisonment in jail or worked on the roads for not exceeding two years, or by both such fine and imprisonment.

1913, c. 156, s. 1 (11).

See *State v. Agey*, 171-831.

ART. 11. FIDELITY INSURANCE COMPANIES

6376. May act as fiduciaries. Any corporation licensed by the insurance commissioner, where such powers or privileges are granted it in its charter, may be guardian, trustee, assignee, receiver, executor or administrator in this state without giving any bond; and the clerks of the superior courts or other officers charged with the duty, or clothed with the power of making such appointments, are authorized to appoint such corporation to any such office, whether the corporation is a resident of this state or not.

Rev., s. 4799; 1899, c. 54, s. 47; 1903, c. 438, s. 5.

6377. License to do business. Before any such corporation is authorized to execute any bond, obligation, or undertaking, or act in any fiduciary capacity with-

out bond, it must be licensed by the insurance commissioner of the state, which the commissioner is authorized to do when satisfied that such company or corporation is safe and solvent and has complied with the laws of this state applicable to such companies, and if a foreign company, that it has also complied with the conditions, rules, and regulations governing the admission of foreign insurance companies to do business in this state.

Rev., s. 4800; 1899, c. 54, s. 46; 1901, c. 706, s. 1.

6378. Examination as to solvency. The commissioner shall examine into the solvency of such corporation, and shall, if he deem it necessary, at the expense of the corporation, make or cause to be made an examination at its home office of its assets and liabilities.

Rev., s. 4801; 1899, c. 54, s. 46; 1901, c. 706.

6379. Certificate of solvency equivalent to justification. After any such corporation has been licensed by the commissioner, the certificate of the commissioner that it has been admitted to do business in the state and is licensed by the insurance commissioner and is solvent to an amount not less than one hundred thousand dollars, shall be, until revoked by him, equivalent to the justification of sureties, and full evidence of its authority to give such bonds or undertakings. There shall be no charge for the seal of this certificate.

Rev., s. 4802; 1899, c. 54, s. 46; 1901, c. 706.

6380. Clerk of superior court notified of license and revocation. The insurance commissioner, upon granting license to any such corporation, shall immediately notify the clerk of the superior court of each county in the state that such corporation has been licensed under this chapter; and whenever the commissioner is satisfied that any corporation licensed by him has become insolvent, or is in imminent danger of insolvency, he shall revoke the license granted to it, and notify the clerk of the superior court of each county of such revocation; and after such notification the right of such corporation to hold any office, or be surety on any bond, as permitted by this chapter, ceases.

Rev., s. 4803; 1899, c. 54, s. 50.

6381. Resident agents required. All business done in this state by any fidelity insurance company must be done through regularly authorized agents residing in this state, or through applications of such agents; and all policies so issued must be countersigned by such agents.

Rev., s. 4804; 1899, c. 54, s. 108; 1903, c. 438, s. 11.

6382. Limitation of liability assumed. No fidelity or surety company shall incur in behalf or on account of any one person, partnership, association, or corporation a liability for an amount larger than one-tenth of its assets, unless it shall be secured from loss thereon beyond that amount by suitable and sufficient collateral agreements of indemnity, by deposit with it in pledge or conveyance to it in trust, for its protection, of property equal in value to the excess of its liability over such limit; or, if such liability is incurred in behalf or on account of a fiduciary holding property in a trust capacity, by such deposit or other disposition of a suitable and sufficient portion of the estate so held that no further sale, mort-

gage, pledge, or other disposition can be made thereof without such company's approval, except by the decree of a court having proper jurisdiction. If any company violates the provisions of this section, the insurance commissioner may revoke its authority to do business in the state.

1911, c. 28.

ART. 12. PROMOTING AND HOLDING COMPANIES

6383. Terms defined. As the terms are used in this article, "promoting corporation" means a corporation or joint-stock association, engaged in the business of organizing or promoting or endeavoring to organize or promote the organization of an insurance corporation or corporations, or in any way assisting therein; "holding corporation" means a corporation or joint-stock association, which holds or is engaged in the acquisition of the capital stock or a major portion thereof of one or more insurance corporations for the purpose of controlling the management thereof, as voting trustee or otherwise; and "securities" means the shares of capital stock, subscription, certificates, debenture bonds, and any and all other contracts or evidences of ownership of or interest in insurance corporations, or in promoting or holding corporations.

1913, c. 182, s. 1.

6384. Certificate required. No individual, partnership, association, or corporation, as the agent of another or as a broker, shall sell or offer for sale, or in any way assist in the sale in this state of the securities of any promoting or holding corporation, or of any insurance corporation, which is not at that time lawfully engaged or authorized to engage in the transaction of the business of insurance in this state, without first procuring, as hereinafter provided, a certificate of authority from the insurance department to sell such securities; nor shall any individual, partnership, association, or corporation sell or offer for sale in this state the securities of any promoting or holding corporation, or of any insurance corporation which is not at the time of such sale or offer of sale lawfully engaged or authorized to engage in the transaction of the business of insurance in the state, unless such corporation has first procured from the insurance commissioner, as hereinafter provided, a certificate that the corporation has fully complied with the provisions of this article, and is authorized to sell the securities. Every certificate issued by the insurance commissioner pursuant to the provisions of this article shall state in bold type that the commissioner in no way recommends the securities thereby authorized to be sold, and shall be renewable annually, upon written application, filed on or before the first day of April of each year, and may be revoked for cause at any time by the commissioner. The commissioner shall prepare and furnish upon request suitable blank forms of application for the certificates required by this article.

1913, c. 182, s. 2.

6385. Application for certificate by agent. Every individual, partnership, association, or corporation desiring or intending to sell or to offer for sale in this state the securities of insurance corporations or of any holding or promoting corporation shall file with the insurance commissioner an application for a certificate of such authority. This application must contain a statement, verified by oath, setting forth the name and address of the applicant, previous business experi-

ence, date and place of birth or organization, and such other information as the commissioner requires. It is the duty of the commissioner to examine the application and to make any further inquiry or examination of the applicant as he deems advisable. If upon examination the commissioner finds the applicant, or if a corporation, the officers and directors thereof, to be trustworthy persons of good business credit, he may issue to the applicant a certificate of authority to sell or offer for sale in this state the securities of any insurance corporation, and of any promoting or holding corporation previously authorized under this article, which shall be mentioned therein.

1913, c. 182, s. 3.

6386. Application for certificate by corporation. Every such unauthorized insurance corporation, and every promoting or holding corporation, whose securities are offered for sale in this state, must file with the insurance commissioner copies of all securities to be offered for sale, and an application for certificate of authority under this article which shall contain a statement in detail of the plans and purposes of such corporation, the amount and par value of the securities to be offered for sale, and the selling price thereof, the manner in which the money paid in therefor is to be spent or employed, the rate of commission to be paid for the sale of such securities, the salaries to be paid to the officers of such corporation, and such other information as the insurance commissioner requires. No change shall thereafter be made in the form or character of the securities to be offered for sale, or in the plans or purposes of any such corporation, without the approval thereof in writing by the commissioner. It is the duty of the commissioner to examine the application and other documents filed, and to make any further inquiry or examination of the corporation as he deems advisable. If upon examination the commissioner finds that the plans and purposes of the corporation are proper, that its condition is satisfactory, that the amount of its securities is reasonable, that the price at which such securities are to be sold is adequate, and that the manner in which the money paid in therefor, the rate of commissions to be paid and the salaries of officers are fair, he may issue a certificate that the corporation has complied with all the provisions of this article, and is authorized to sell or offer its securities for sale in this state.

1913, c. 182, s. 4.

6387. Approval of advertising matter; misrepresentation. No printed matter may be used in connection with the sale of securities of any such promoting, holding, or insurance corporation, for advertising purposes, or in the dissemination of information with reference thereto, unless it is first submitted to the insurance commissioner and approved by him in writing. No such corporation, and no officer, director, or agent thereof, or any other person, copartnership, association, or corporation may issue, circulate, or employ or cause or permit to be used, issued, circulated, or employed any circular or statement, whether printed or oral, misrepresenting or exaggerating the earnings of insurance corporations or the value of their corporate stock or other securities, or the profits to be derived either directly or indirectly from the organization and management of insurance corporations, or of organizing or holding corporations. No insurance or other corporation, and no individual, copartnership, or association transacting business

in this state shall place or offer to place insurance in any corporation in connection with the sale or purchase of the securities of any insurance corporation or of any promoting or holding corporation.

1913, c. 182, s. 5.

ART. 13. RATE-MAKING COMPANIES

6388. Information to be filed with insurance commissioner. Every corporation, association, board, or bureau which now exists or hereafter may be formed, and every person who maintains, or hereafter may maintain, a bureau or office for the purpose of suggesting, approving or making rates to be used by more than one underwriter for insurance, including surety bonds, on property or risks of any kind located in this state, shall file with the insurance commissioner a copy of the articles of agreement, association, or incorporation and the by-laws and all amendments thereto under which such person, association, or bureau operates or proposes to operate, together with his or its business address and a list of the members or insurance corporations represented or to be represented by him or it, as well as such other information concerning such rating organization and its operations as may be required by the insurance commissioner.

1913, c. 145, s. 1; 1915, c. 166, s. 8.

6389. Examination by insurance commissioner; reports. Every such person, corporation, association, or bureau, whether before or after the filing of the information specified in the preceding section, shall be subject to the visitation, supervision, and examination of the insurance commissioner, who shall cause to be made an examination thereof as often as he deems it expedient, and at least once in three years. For such purpose he may appoint as examiners one or more competent persons, and upon such examination he, his deputy, or any examiner authorized by him shall have all the powers given to the insurance commissioner, his deputy, or any examiner authorized by him by law, including the power to examine under oath the officers and agents and all persons deemed to have material information regarding the business or manner of operation by every such person, corporation, association, bureau, or board. The insurance commissioner shall make public the results of such examination, and shall report to the legislature in his annual report on the methods of such rating organization and the manner of its operation.

1913, c. 145, s. 2.

6390. Schedule of rates filed. Every such person, corporation, association, or bureau, as well as every insurance company doing business in the state, shall file with the insurance commissioner, whenever he may call therefor, any and every schedule of rates or such other information concerning such rates as may be suggested, approved, or made by any such rating organization for the purposes specified in section 6388, or by such company for its own use.

1913, c. 145, s. 3; 1915, c. 166, s. 8.

6391. Certain conditions forbidden; no discrimination. No such person, corporation, association, or bureau shall fix or make any rate or schedule of rates which is to or may apply to any risk within this state, on the condition that the whole amount of insurance on such risk or any specified part thereof shall be

placed at such rates, or with the members of or subscribers to such rating organization; nor shall any such person, association, or corporation authorized to transact the business of insurance within this state, fix or make any rate or schedule of rates or charge a rate which discriminates unfairly between risks within this state of essentially the same hazard, or if such rate be a fire insurance rate, which discriminates unfairly between the risks in the application of like charges or credits or which discriminates unfairly between risks of essentially the same hazards and having substantially the same degree of public protection against fire. Whenever it is made to appear to the satisfaction of the insurance commissioner that such discrimination exists, he may, after a full hearing, either before himself or before any salaried employee of the insurance department whose report he may adopt, order such discrimination removed; and all such persons, corporations, associations, or bureaus affected thereby shall immediately comply therewith; nor shall such persons, corporations, associations, or bureaus remove such discrimination by increasing the rates on any risk or class of risks affected by such order unless it is made to appear to the satisfaction of the insurance commissioner that such increase is justifiable.

1913, c. 145, s. 4.

6392. Record to be kept; hearing on rates. Every such rating organization shall keep a careful record of its proceedings and shall furnish upon demand to any person upon whose property or risk a rate has been made, or to his authorized agent, full information as to such rate, and if such property or risk be rated by schedule, a copy of such schedule; it shall also provide such means as may be approved by the insurance commissioner whereby any person affected by such rate may be heard, either in person or by agent, before the governing or rating committee or other proper executive of such rating organization on an application for a change in such rate.

1913, c. 145, s. 5.

6393. Hearing on rates before insurance commissioner. Any person, firm, or corporation aggrieved by any rating of a fire insurance company, bureau, or board, may file a complaint in writing with the insurance commissioner stating in detail the grounds upon which the complainant asks relief. The commissioner shall set a time, not earlier than seven days after the date of the notice, and a place for a hearing upon the complaint. After due hearing the commissioner shall make a finding as to whether the established rate is excessive or unfair, and shall make such recommendations as he deems advisable. The finding and recommendations in each case shall be made a matter of record, and shall be open to public inspection.

1915, c. 166, s. 8.

6394. Certain insurance contracts excepted. This article shall not apply to any contract of life insurance, nor to any contract of insurance upon or in connection with marine or transportation risks or hazards other than contracts for automobile insurance, nor to contracts of insurance upon property or risks located without this state, nor to contracts made by persons, partnerships, associations, or corporations authorized to do business on the mutual or coöperative plan as associations or societies, nor title and credit insurance.

1913, c. 145, s. 6.

ART. 14. REAL-ESTATE TITLE INSURANCE COMPANIES

6395. Purposes of organization. Companies may be formed in the manner provided in this subchapter, with a capital of not less than fifty thousand dollars nor more than two hundred and fifty thousand dollars, for the purpose of examining titles to real estate, of furnishing information in relation thereto, and of insuring owners and others interested therein against loss by reason of encumbrances and defective title. Such companies shall not be subject to the provisions of this chapter except as regards the manner of their formation and as provided in this article.

Rev., s. 4745; 1899, c. 54, s. 38; 1901, c. 391, s. 3.

6396. Certificate of authority to do business. Before any such company may issue any policy or make any contract or guarantee of insurance, it shall file with the insurance commissioner a certified copy of the record or the certificate of its organization in the office of the secretary of state, and obtain from the insurance commissioner his certificate that it has complied with the laws applicable to it and that it is authorized to do business.

Rev., s. 4745; 1899, c. 54, s. 38; 1901, c. 391, s. 3.

6397. Annual statement and license required. Every such corporation shall, on or before the thirtieth day of January of each year, file in the office of the insurance commissioner a statement, such as he may require, showing its condition and its affairs for the year ending on the preceding thirty-first day of December, signed and sworn to by its president or secretary or treasurer and one of its directors. For neglect to file such annual statement or for making a wilfully false statement it shall be liable to the same penalties imposed upon other insurance companies. The insurance commissioner shall annually license such companies and their agents, and have the same power and authority to visit and examine such corporations as he has in the case of other domestic insurance companies; and the duties and liabilities of such corporations and their agents in reference to such examinations are the same as those of other domestic insurance companies.

Rev., s. 4745; 1899, c. 54, s. 38; 1901, c. 391, s. 3.

ART. 15. RECIPROCAL OR INTER-INSURANCE EXCHANGES

6398. Exchange of insurance contracts authorized. Individuals, partnerships, and corporations of this state hereby designated as subscribers, are authorized to exchange reciprocal or inter-insurance contracts with each other, or with individuals, partnerships, and corporations of other states and countries, providing indemnity among themselves from any loss which may be insured against under other provisions of the laws, excepting life insurance. Such contracts may be executed by an attorney, agent, or other representative, herein designated attorney, duly authorized and acting for such subscribers.

1913, c. 183, ss. 1, 2.

6399. Statement to be filed with insurance commissioner. The subscribers, so contracting among themselves, shall, through their attorney, file with the insurance commissioner of this state a declaration verified by oath of such attorney, setting forth:

1. The name or title of the office at which such subscribers propose to exchange such indemnity contracts. This name or title shall not be so similar to any other name or title previously adopted by a similar organization, or by any insurance corporation or association, as in the opinion of the insurance commissioner is calculated to result in confusion or deception. The office or offices through which such indemnity contracts shall be exchanged shall be classified as reciprocal or inter-insurance exchanges.

2. The kind or kinds of insurance to be effected or exchanged.

3. A copy of the form of policy, contract, or agreement under or by which the insurance is to be effected or exchanged.

4. A copy of the form of power of attorney or other authority of such attorney under which the insurance is to be effected or exchanged.

5. The location of the office or offices from which such contracts or agreements are to be issued.

6. That applications have been made for indemnity upon at least one hundred separate risks, aggregating not less than one and one-half million dollars as represented by executed contracts or bona fide applications, to become concurrently effective, or, in case of liability or compensation insurance, covering a total payroll of not less than one and one-half million dollars: Provided, that when the attorney maintains the central office in this state the insurance commissioner may authorize an exchange with a less number of risks and a smaller amount of indemnity to be exchanged and an amount of cash deposits less than twenty-five thousand dollars.

7. That there is on deposit with such attorney and available for payment of losses a sum of not less than twenty-five thousand dollars.

1913, c. 183, s. 3.

6400. Agreement for service of process. At the time of filing the declaration provided for by the preceding section, the attorney shall file with the insurance commissioner an instrument in writing, executed by him for the subscribers, conditioned that upon the issuance of certificate of authority provided for in this article, service of process may be had upon the insurance commissioner in all suits in this state arising out of such policies, contracts, or agreements, which service shall be valid and binding upon all subscribers exchanging at any time reciprocal or inter-insurance contracts through such attorney. Three copies of such process shall be served, and the insurance commissioner shall file one copy, forward one copy to the attorney, and return one copy with his admission of service.

1913, c. 183, s. 4.

6401. Statement as to amount of risks. There shall be filed with the insurance commissioner of this state by such attorney a statement under his oath showing the maximum amount of indemnity upon any single risk, and the attorney shall, whenever and as often as the same shall be required, file with the insurance commissioner a statement verified by his oath to the effect that he has examined the commercial rating of such subscribers as shown by the reference book of a commercial agency having at least one hundred thousand subscribers, and that from

such examination or from other information in his possession it appears that no subscriber has assumed on any single risk an amount greater than ten per cent of the net worth of such subscriber.

1913, c. 183, s. 5.

6402. Certificate issued by commissioner. Upon the filing of the foregoing papers, and upon the payment of fees as provided for in this article, the insurance commissioner shall examine and pass upon the same, and if found correct, and in accordance with this article, issue a certificate of authority, which shall expire on the first day of April next succeeding.

1913, c. 183, s. 6.

6403. Reserve fund. There shall at all times be maintained as a reserve a sum in cash or convertible securities equal to fifty per centum of the aggregate net annual deposits collected and credited to the accounts of the subscribers on policies having one year or less to run and pro rata on those for longer periods. For the purpose of said reserve, net annual deposits shall be construed to mean the advance payments of subscribers after deducting therefrom the amounts specifically provided in the subscribers' agreements, for expenses. Said sum shall at no time be less than twenty-five thousand dollars, and if at any time fifty per cent of the aggregate deposits so collected and credited shall not equal that amount, then the subscribers, or their attorney for them, shall make up any deficiency.

1913, c. 183, s. 7.

6404. Annual reports; examination by commissioner. The attorney shall make an annual report to the insurance commissioner for each calendar year, showing the financial condition of affairs at that office where such contracts are issued, and shall furnish such additional information and reports as may be required; but the attorney shall not be required to furnish the names and addresses of any subscribers. The business affairs and assets of the reciprocal or inter-insurance exchanges shall be subject to examination by the insurance commissioner.

1913, c. 183, s. 8.

6405. Exchange insurance in other companies. Any corporation now or hereafter organized under the laws of this state shall, in addition to the rights, powers, and franchises specified in its articles of incorporation, have full power and authority to exchange insurance contracts of the kind and character herein mentioned through exchanges complying with this article.

1913, c. 183, s. 9.

6406. Punishment for failing to comply with law. Any attorney or representative who shall, except for the purpose of applying for certificate of authority as herein provided, exchange any contracts of indemnity of the kind and character specified in this article, or directly or indirectly solicit or negotiate any applications for same without first complying with the foregoing provisions, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than one hundred dollars nor more than five hundred dollars.

1913, c. 183, s. 10.

6407. Certificate to attorney; revocation. Each attorney by or through whom are issued any policies or contracts for indemnity of the character referred to in this article shall procure from the insurance commissioner annually a certificate of authority, stating that all the requirements of this article have been complied with, and upon such compliance and the payment of the fees and taxes required by this article, the insurance commissioner shall issue such certificate of authority. The insurance commissioner may revoke or suspend any certificate of authority issued hereunder in case of breach of any of the conditions imposed by this article after reasonable notice has been given the attorney in writing so that he may appear and show cause why such action should not be taken.

1913, c. 183, s. 11.

6408. License fee and tax. Individuals, firms, and corporations exchanging reciprocal or inter-insurance contracts as provided herein shall pay through their attorney an annual license of fifty dollars, and two and one-half per centum of the gross premium deposits, reduced by all sums distributed among the subscribers or credited to their accounts, and also other regular fees.

1913, c. 183, s. 12.

6409. Application of general insurance law. Nothing in the general insurance laws, except as herein provided and as may specifically apply to such contracts and exchanges, shall be construed to extend to inter-insurance or reciprocal exchanges licensed under this article.

1913, c. 183, s. 13.

ART. 16. FOREIGN INSURANCE COMPANIES

6410. Admitted to do business. Foreign insurance companies, upon complying with the conditions herein set forth applicable to them, may be admitted to transact in this state, by constituted agents resident herein, any class of insurance authorized by the laws in force relative to the duties, obligations, prohibitions, and penalties of insurance companies, and subject to all laws applicable to the transaction of such business by foreign insurance companies and their agents.

Rev., s. 4746; 1899, c. 54, s. 61.

6411. Conditions of admission. A foreign insurance company may be admitted and authorized to do business when it:

1. Deposits with the insurance commissioner a certified copy of its charter or certificate of organization and a statement of its financial condition and business, in such form and detail as he requires, signed and sworn to by its president and secretary or other proper officer, and pays for the filing of this statement the sum required by law.

2. Satisfies the insurance commissioner that it is fully and legally organized under the laws of its state or government to do the business it proposes to transact; that it has, if a stock company, a fully paid-up and unimpaired capital, exclusive of stockholders' obligations of any description, of an amount not less than \$100,000 (but nothing in this subsection applies to companies now authorized to do business in this state); and if a mutual company, other than life, that its net cash assets are equal to the capital required of like companies on the stock plan; or that it possesses net cash assets of not less than \$100,000 or net cash assets of

not less than \$50,000, with, also, invested assets of not less than \$100,000, and in each case with additional contingent assets of not less than \$300,000, and that such capital or net assets are well invested and immediately available for the payment of losses in this state; and that it insures on any single hazard a sum no larger than one-tenth of its net assets.

3. By a duly executed instrument filed in his office constitutes and appoints the insurance commissioner and his successor its true and lawful attorney, upon whom all lawful processes in any action or legal proceeding against it may be served, and therein agrees that any lawful process against it which may be served upon such attorney shall be of the same force and validity as if served on the company, and that it will not have removed from any court of this state to the United States circuit or district court any action instituted against it, and that it will not institute any action or suit in equity in the United States courts against any citizen of this state growing out of, or in any way connected with, any policy of insurance issued by it; and the authority thereof shall continue in force irrevocable so long as any liability of the company remains outstanding in this state. Copies of this instrument, certified by the insurance commissioner, are sufficient evidence thereof, and service upon such attorney is sufficient service upon the principal.

Power of attorney hereunder is "irrevocable so long as any liability of company remains outstanding": *Ins. Co. v. Scott*, 136-157; *Biggs v. Life Assn.*, 128-5; *Williams v. Life Assn.*, 145-128; see annotations under section 6414.

4. Appoints as its agent or agents in this state some resident or residents thereof.

5. Obtains from the insurance commissioner a certificate that it has complied with the laws of the state and is authorized to make contracts of insurance. If a fire insurance company, it must also comply with the provisions of this chapter as to deposits and reinsurance by such companies.

Rev., s. 4747; 1899, c. 54, s. 62; 1901, c. 391, s. 5; 1903, c. 438, s. 6.

Under Code of 1883, section 3062, providing that it shall be unlawful to transact any fire insurance business in this state before making the required deposit of bonds, and laws of 1893, c. 299, sec. 8, providing that all contracts of insurance, the application for which is taken within the state, shall be deemed to be made in the state, where an application is taken by a broker for a foreign insurance company which has not made the deposit, the policy is a North Carolina contract and void: *Ins. Co. v. Edwards*, 124-116.

6412. Limitation as to classes of business. No insurance company admitted to do business in the state may be authorized to transact more than one class or kind of insurance therein, unless it has the requisite capital for such business engaged in, and such a company may undertake two or more of the classes of insurance set out in article six, section 6327, of this chapter, upon providing for each additional kind at least fifty thousand dollars additional capital. But if life, fire, and credit insurance is added to any other line or lines, the additional capital shall be one hundred thousand dollars each, and the company shall pay the license taxes and fees for each class or kind of insurance provided by this chapter.

Rev., s. 4748; 1899, c. 54, s. 65; 1901, c. 391, s. 5; 1903, c. 438, s. 6; 1911, c. 111, s. 2.

6413. Reciprocal laws. When, by the laws of any other state or nation, any taxes, fines, penalties, licenses, fees, deposits of money or of securities, or other

obligations or prohibitions are imposed upon insurance companies of this state doing business in such other state or nation or upon their agents therein, then, so long as such laws continue in force, the same taxes, fines, penalties, licenses, fees, deposits, obligations and prohibitions, of whatever kind, shall be imposed upon all such insurance companies of such other state or nation doing business within this state and upon their agents here. Nothing herein repeals or reduces the license, fees, taxes, and other obligations now imposed by the laws of this state or to go into effect with the companies of any other state or nation unless some company of this state is actually doing or seeking to do business in such state or nation. When an insurance company organized under the laws of any state or country is prohibited by the laws of such state or country or by its charter from investing its assets other than capital stock in the bonds of this state, then and in such case the insurance commissioner is authorized and directed to refuse to grant a license to transact business in this state to such insurance company.

Rev., s. 4749; 1899, c. 54, s. 71; 1903, c. 536, s. 11.

6414. Service of legal process upon insurance commissioner. The service of legal process upon any foreign insurance company, admitted and authorized to do business in this state under the provisions of this chapter, shall be made by leaving the same in the hands or office of the insurance commissioner, and no service upon a company that is licensed to do business in this state is valid unless made upon the insurance commissioner, the general agent for service, or some officer of the company. As a condition precedent to a valid service of process and of the duty of the commissioner in the premises, the plaintiff shall pay to the insurance commissioner at the time of service the sum of one dollar, which the plaintiff shall recover as taxable costs if he prevails in his action. In any action of which a justice of the peace has jurisdiction, summons may be served on any licensed agent of such company, returnable in not less than ten days from date of service; if there is no such agent in the county, then the summons may be served as provided or in other actions against foreign corporations in a court of a justice of the peace.

Rev., s. 4750; 1899, c. 54, ss. 16, 62; 1903, c. 438, s. 6.

An exception to court's refusal to dismiss an action against a foreign insurance company because summons was not served on state insurance commissioner as required by this section, cannot be sustained where trial judge found no facts and it does not appear affirmatively that company is licensed to do business: *Parker v. Ins. Co.*, 143-339.

In absence of any statement of facts by trial judge, this court must presume, in support of his ruling, which is presumed to be correct, that he found as a fact that the defendant was not duly licensed, and that this section did not apply, but that the process had been properly served under section 483: *Ibid.*

In action against foreign fraternal insurance society doing business in this state, service of summons on insurance commissioner brings the corporation into court: *Brenizer v. Royal Arcanum*, 141-409.

Service of process on the state insurance commissioner is valid although the insurance company has not domesticated: *Hinton v. Ins. Co.*, 135-314.

Fact that foreign insurance company did not comply with law requiring payment of a license tax and the doing of certain other things as a condition precedent to doing business in this state, had no bearing upon service of process against such company upon the insurance commissioner, since that depended upon existence of liability and not upon the doing of business within the state: *Biggs v. Life Assn.*, 128-5.

Section 6287 does not apply to a policy issued prior to its passage to a citizen of this state and subsequently assigned to a citizen of another state, so as to make a summons served upon

the insurance commissioner here in an action by a citizen of such other state a sufficient service, when the defendant has previously thereto withdrawn from the state and canceled its power of attorney to the insurance commissioner: *Williams v. Life Assn.*, 145-128.

Service of summons is not limited to the method prescribed in this section; but it may be made under sections 483 and 1137: *Pardue v. Absher*, 174-676. See, also, *Fisher v. Ins. Co.*, 136-224.

When service of summons may be made upon a foreign corporation as provided in this section, the statute of limitations is not suspended under section 411: *Anderson v. Fidelity Co.*, 174-417; *Volivar v. Cedar Works*, 152-656, overruling *Green v. Ins. Co.*, 139-309.

6415. Duty of commissioner when served with process. When legal process is served upon the insurance commissioner as attorney for a foreign company, under the provisions of this chapter, he shall immediately notify the company of such service by letter prepaid and directed to its secretary, or in the case of a foreign country, to its resident manager, if any, in the United States; and must within two days after such service forward in the same manner a copy of the process served on him to such secretary or manager, or to such other person previously designated by the company by written notice filed in the office of the commissioner. The commissioner must keep a record of all such proceedings, which shall show the day and hour of service of the process on the commissioner.

Rev., s. 4751; 1899, c. 54, s. 16.

6416. Action to enforce compliance with this chapter. Compliance with the provisions of this chapter as to deposits, obligations, and prohibitions, and the payment of taxes, fines, fees, and penalties by foreign insurance companies, may be enforced in the ordinary course of legal procedure by action brought in the superior court of Wake county by the attorney-general in the name of the state upon the relation of the insurance commissioner.

Rev., s. 4752; 1899, c. 54, s. 102; 1903, c. 438, s. 10.

SUBCHAPTER III. FIRE INSURANCE

ART. 17. GENERAL REGULATIONS OF BUSINESS

6417. Risks carried as incidental to fire protection. All insurance companies authorized to transact fire insurance business in this state may, in addition to the business which they are now authorized by law to do, insure sprinklers, pumps, and other apparatus erected or put in position for the purpose of extinguishing fires, against damage, loss, or injury resulting from accidental causes other than fire; and may also insure any property which such companies are authorized to insure against loss or damage by fire, against damage, loss, or injury by water or otherwise, resulting from the accidental breaking of or injury to such sprinklers, pumps, or other apparatus, arising from causes other than fire. Contracts of insurance of this kind, provided for in this section, shall not be incorporated in any contract of insurance against loss or damage by fire, but may be contained in riders attached thereto, the conditions of which shall be prescribed by the insurance commissioner.

Rev., s. 4754; 1899, c. 54, s. 24; 1907, c. 1000, s. 6.

6418. Policies limited as to amount and term. No insurance company or agent shall knowingly issue any fire insurance policy upon property within this state

for an amount which, together with any existing insurance thereon, exceeds the fair value of the property, nor for a longer term than seven years. Policies issued in violation of this section are binding upon the company issuing them, but the company is liable for the forfeitures by law prescribed for such violation.

Rev., s. 4755; 1899, c. 54, ss. 39, 99; 1903, c. 438, s. 10.

Agent must ascertain the value of the property: *Queen v. Ins. Co.*, 177-34. Violation subjects to forfeiture under section 6433.

6419. Limit of liability on total loss. When buildings insured against loss by fire and situated within the state are totally destroyed by fire, the company is not liable beyond the actual cash value of the insured property at the time of the loss or damage; and if it appears that the insured has paid a premium on a sum in excess of the actual value, he shall be reimbursed the proportionate excess of premium paid on the difference between the amount named in the policy and the ascertained values, with interest at six per centum per annum from the date of issue.

Rev., s. 4756; 1899, c. 54, s. 40.

6420. Policies for the benefit of mortgagees. Where by an agreement with the insured, or by the terms of a fire insurance policy taken out by a mortgagor, the whole or any part of the loss thereon is payable to a mortgagee of the property for his benefit, the company shall, upon satisfactory proof of the rights and title of the parties, in accordance with such terms or agreement, pay all mortgages protected by such policy in the order of their priority of claim, as their claims appear, not beyond the amount for which the company is liable, and such payments are, to the extent thereof, payment and satisfaction of the liabilities of the company under the policy.

Rev., s. 4757; 1899, c. 54, s. 41.

Where there is a clause providing that the mortgagee's rights shall not be affected by the acts of the insured, the mortgagee will be protected; but where there is only a "loss payable" clause in favor of mortgagee, a forfeiture by the insured will defeat the rights of mortgagee: *Roper v. Ins. Co.*, 161-151. Holders of liens for materials, not filed at the issuance of the policy, share only as general creditors under the policy: *Ibid.*

6421. Fire loss reported to commissioner before payment. Every insurance company transacting business in this state shall, upon receiving notice of loss by fire of property in North Carolina, on which it is liable under a policy of insurance, notify the insurance commissioner thereof, either directly or through some bureau or association approved by the commissioner, and no insurance upon any such property shall be paid by any company until one week after this notification. A company violating this section may be fined by the insurance commissioner the sum of ten dollars for each offense, and for refusal to comply with its provisions its license may be canceled by the commissioner.

Rev., s. 4822; 1899, c. 54, s. 40; 1903, c. 438, s. 4; 1915, c. 166, s. 4.

6422. Reinsurance restricted and regulated. When an application for license, renewal of license, or for admission to this state, is made by a company, whether of this state, of another state of the United States, or of a foreign country, for the transaction of business of fire insurance herein, the company shall, as one of the prerequisites of license and admission, file a sworn declaration signed by its

president and secretary, or officers corresponding thereto, that it will not reinsure any risk or part thereof taken by it on any property located in this state with any company not authorized to transact the business of fire insurance in the state. Every fire insurance company admitted shall annually and at such other times as the insurance commissioner requires, in addition to all returns now required by law of it or its agents or managers, make a return to the insurance commissioner, in such form and detail as is prescribed by him, of all reinsurance contracted for or effected by it directly or indirectly upon property located in this state, this return to be certified by the oath of its president and secretary, if a company of one of the United States, and if a company of a foreign country, by its president and secretary or by officers corresponding thereto, as to such reinsurance contracted for or effected through the foreign office, and by the United States manager as to such reinsurance effected by the United States branch. If any company, domestic or foreign, directly or indirectly, reinsure any risk taken by it on any property located in this state in any company not duly authorized to transact business herein, or if it refuses or neglects to make the returns required by this section, the insurance commissioner shall revoke its authority to transact business in this state. The provisions of this section also apply to companies licensed to do reinsurance business only. It is unlawful for any company reinsuring risks on property located in this state to reinsure such risks or parts thereof except in companies authorized by the laws of this state to do such business.

Rev., s. 4770; 1899, c. 54, s. 63; 1901, c. 391, s. 5.

6423. Penalty for reinsuring in unauthorized company. If any fire insurance company shall, directly or indirectly, reinsure any risk taken by it on any property located in North Carolina in any company not duly authorized to transact business herein, the insurance agent and the company effecting or acting in the negotiation of such reinsurance shall severally be punished by a fine of five hundred dollars.

Rev., s. 3495; 1899, c. 54, ss. 63, 98.

6424. No action lies on policy of unlicensed company. No action may be maintained in any court in the state upon a policy or contract of fire insurance issued upon property situated in the state by any company, association, partnership, individual, or individuals that have not been authorized by the insurance commissioner to transact such insurance business.

Rev., s. 4763; 1899, c. 54, s. 105.

This does not render the policy void as to the insured: *Hay v. Ins. Co.*, 167-82; *Ins. Co. v. Edwards*, 124-116. See annotations under section 6288.

6425. Citizens authorized to procure policies in unlicensed foreign companies.

1. *What applicant must show.* The insurance commissioner, upon the annual payment of a fee of twenty dollars, may issue licenses to citizens of this state, subject to revocation at any time, permitting the person named therein to procure policies of fire insurance on property in this state in foreign insurance companies not authorized to transact business in the state. Before the person named in such a license may procure any insurance in such companies or on any property in this state, he must execute and file with the insurance commissioner an affi-

davit that he is unable to procure in companies admitted to do business in the state the amount of insurance necessary to protect such property, and may only procure insurance under such license after he has procured insurance in companies admitted to do business in this state to the full amount which those companies are willing to write on the property; but such licensed person shall not be required to offer any portion of such insurance to any company which is not possessed of cash assets amounting to at least twenty-five thousand dollars, or one which has, within the preceding twelve months, been in an impaired condition.

2. *Account and report.* Each person so licensed must keep a separate account of the business done under the license, a certified copy of which account he shall forthwith file with the insurance commissioner, showing the exact amount of such insurance placed by any person, firm, or corporation, the gross premium charged thereon, the companies in which the same is placed, the date and terms of the policies, and also a report in the same detail of all such policies canceled and the gross return premium thereon.

3. *Bond filed.* Before receiving such license the applicant therefor shall execute and deliver to the insurance commissioner a bond in the penal sum of one thousand dollars, with such sureties as the insurance commissioner may approve, with a condition that the licensee will faithfully comply with all the requirements of this section, and will file with the insurance commissioner, in January of each year, a sworn statement of the gross premiums charged for insurance procured or placed, and the gross returned premiums on such insurance canceled under such license during the year ending on the thirty-first day of December next preceding, and at the time of filing such statement will pay into the treasury of the state a sum equal to five per centum of such gross premiums, less return premiums, so reported; or pay such tax at the time of taking out and delivering such policy or policies.

4. *Broker may obtain license.* Any broker licensed under this section may, upon application to the insurance commissioner, be allowed to place policies of insurance with any mutual fire insurance company not doing or licensed to do business in this state, not paying commissions upon business, not having agents to solicit business, and doing only one class of fire insurance business, if he files with the insurance department a certified copy of the charter of each such company, a statement of its financial condition on a blank of the department, and certificate of its authority to do business at its home office, and also receives from the insurance commissioner a license for each company to do business through him on the payment by him of the license, taxes, and fees required by law. All such contracts of insurance placed through any such broker are valid and legal, and the risks upon which such policies are placed may be examined and inspected by regular agents or inspectors licensed by the insurance department upon the application of the broker writing the insurance.

Rev., s. 4769; 1899, c. 54, ss. 68, 95; 1903, c. 438, s. 7, c. 680.

6426. Punishment for failure to file affidavit and statements. If any person licensed to procure insurance in an unauthorized foreign company shall procure, or act in any manner in the procurement or negotiation of, insurance in any unauthorized foreign company, and shall neglect to make and file the affidavit

and statements required by the preceding section, he shall forfeit his license and be punished by a fine of not less than one hundred nor more than five hundred dollars, or by imprisonment for not more than one year, or by both.

Rev., ss. 3483, 4769; 1899, c. 54, ss. 68, 95.

6427. Tax deducted from premium; reports filed. When any person or corporation shall insure any property located in this state with an insurance company not licensed to do business in this state, it shall be the duty of such person or corporation to deduct from the premium charged on the policy or policies issued for such insurance five per centum of the premium and remit the same to the insurance commissioner of the state, at the same time reporting to the insurance commissioner the name of the company or companies issuing the policy or policies, the location of the property insured, and the premium charged. The insurance commissioner shall pay the said amounts to the treasurer of the state. If such report is not made on or before the thirtieth days of July and January of each year for the business done prior to July first and January first preceding, there shall be added to the amount of taxes thereon the sum of one per centum on the first day of each month thereafter.

1915, c. 109, s. 8.

6428. Resident agents required. Foreign fire insurance companies legally authorized to do business in this state through regularly commissioned and licensed agents located in the state shall not make contracts of fire insurance on property herein, except through such resident agents as are regularly commissioned by them and licensed to write policies of fire insurance in this state. This section does not apply to direct insurance covering the rolling stock of railroad corporations or property in transit while in the possession and custody of railroad corporations or other common carriers.

Rev., s. 4764; 1899, c. 54, s. 107; 1901, c. 391, s. 8.

6429. Policies through nonresident agent prohibited. Every fire insurance company authorized to do business in the state is prohibited from authorizing or allowing any person, agent, firm, or corporation who is a nonresident of this state, to issue or cause to be issued, except through a licensed agent, any policy of insurance on property located in the state.

Rev., s. 4765; 1903, c. 488, s. 1; 1905, c. 170.

Section cited in *Hay v. Ins. Co.*, 167-82.

6430. Licensed agents not to pay commissions to nonresident or unlicensed persons. Any person, firm, or corporation licensed by the insurance commissioner to act as a fire insurance agent in this state is prohibited from paying directly or indirectly any commission, brokerage, or other valuable consideration on account of any policy covering property in this state, to any person, firm, or corporation who is a nonresident of the state, or to any person, firm, or corporation not duly licensed by the insurance commissioner as a fire insurance agent; but a fire insurance agent licensed in the state may pay a commission not exceeding five per centum of any premiums collected by him to a licensed nonresident broker. The insurance commissioner is authorized to license a nonresident as a broker when he applies therefor on a proper blank of the department and

makes affidavit that he will not during the fiscal year place directly or indirectly any fire insurance on any property located in North Carolina except through licensed resident agents of the state. The fee for this license and seal is three dollars.

Rev., s. 4766; 1903, c. 488, s. 2; 1905, c. 170, s. 2.

6431. Revocation of license for violation; power of commissioner. When the insurance commissioner has information of a violation of any of the provisions of the next two preceding sections, he shall immediately investigate or cause to be investigated such violation, and if a fire insurance company has violated any of such provisions he shall immediately revoke its license for not less than three nor more than six months for a first offense, and for each offense thereafter for not less than one year. If a person, firm, or corporation licensed by the insurance commissioner as a fire insurance agent violates or causes to be violated any of the provisions of those sections, he shall for the first offense have his license revoked for all companies for which he has been licensed for not less than three nor more than six months, and for the second offense he shall have his license revoked for all companies for which he is licensed, and he shall not thereafter be licensed for any company for one year from the date of the revocation. For the purpose of enforcing the provisions of those sections the insurance commissioner is authorized and empowered to examine persons, administer oaths, and send for papers and records. A failure or refusal on the part of any fire insurance company, person, firm, or corporation, licensed to do business in this state, to appear before the insurance commissioner when requested to do so, or to produce records and papers, or answer under oath, subjects such company, person, firm, or corporation to the penalties of this section.

Rev., s. 4767; 1903, c. 488, ss. 3, 4.

6432. Agreements restricting agent's compensation; penalty. It is unlawful for any fire insurance company, association, or partnership doing business in this state employing an agent who is employed by another fire insurance company, association, or partnership, either directly or through any organization or association, to enter into, make or maintain any stipulation or agreement in restraint of or limiting the compensation which said agent may receive from any other fire insurance company, association, or partnership, or forbidding or prohibiting reinsurance of the risks of a domestic fire insurance company in whole or in part by any company holding membership in or coöperating with such bureau or board. The penalty for any violation of this section shall be a fine of not less than two hundred and fifty dollars nor more than five hundred dollars and the forfeiture of license to do business in this state for a period of twelve months thereafter.

Rev., ss. 3491, 4768; 1905, c. 424; 1915, c. 166, ss. 2, 3.

6433. Punishment for issuing fire policies contrary to law. Any insurance company or agent who makes, issues, or delivers a policy of fire insurance in wilful violation of the provisions of this chapter which prohibit a domestic insurance company from issuing policies before obtaining certificate and authority from the insurance commissioner; or which prohibit the issuing of a fire insurance policy for more than the fair value of the property or for a longer term than

seven years; or which prohibit stipulations in insurance contracts restricting the jurisdiction of courts, or limiting the time within which an action may be brought to less than one year after the cause of action accrues or to less than six months after a nonsuit by the plaintiff, shall forfeit for each offense not less than fifty nor more than two hundred dollars; but the policy shall be binding upon the company issuing it.

Rev., s. 4832; 1899, c. 54, s. 99; 1903, c. 438, s. 10.

See sections 6290, 6326, 6418.

ART. 18. FIRE INSURANCE POLICIES

6434. Terms and conditions must be set out in policy. In all insurance against loss by fire the conditions of insurance must be stated in full, and the rules and by-laws of the company are not a warranty or a part of the contract, except as incorporated in full into the policy.

Rev., s. 4758; 1899, c. 54, s. 42.

6435. Items to be expressed in policies; agent to inspect risks. There shall be printed, stamped, or written on each fire policy issued in this state the basis rate, deficiency charge, the credit for improvements, and the rate at which written, and whenever a rate is made or changed on any property situated in this state a full statement thereof showing in detail the basis rate, deficiency charges and credits, as well as rate proposed to be made, shall be delivered to the owner or his representative having the insurance on the property in charge, by the company, association, their agent or representative, with a notice to the effect that the rate is promulgated and filed with the insurance department. Every agent of a fire insurance company shall, before issuing a policy of insurance on property situated in a city or town, inspect the same, informing himself as to its value and insurable condition.

1915, c. 109, s. 3.

See section 6418.

6436. Standard policy adopted. No fire insurance company shall issue fire insurance policies on property in this state other than those of the standard form filed in the office of the insurance commissioner of the state, known and designated as the standard fire insurance policy of the state of North Carolina, except as follows: (a) A company may print on or in its policies its name, location, and date of incorporation, the amount of its paid-up capital stock, the names of its officers and agents, the number and date of the policy, and if it is issued through an agent, the words: "This policy shall not be valid until countersigned by the duly authorized manager or agent of the company at.....," and after the words "Standard Fire Insurance Policy of the State of North Carolina," on the back of the form, the names of such other states as have adopted this standard form. (b) A company may use in its policies written or printed forms of description and specification of the property insured. (c) A company insuring against damage by lightning may print in the clause enumerating the perils insured against, the additional words, "also any damage by lightning, whether fire ensues or not," and in the clause providing for an apportionment of loss in case of other insurance, the words, "whether by fire, lightning, or both." (d) A company

may write or print upon the margin or across the face of a policy, or write or print in type not smaller than long primer or ten point roman-faced, upon separate slips or riders to be attached thereto, provisions adding to or modifying those contained in the standard form, and all such slips, riders, and provisions must be signed by the officers or agents of the company so using them. The iron safe or any similar clause requiring the taking of inventories, the keeping of books and producing the same in the adjustment of any loss, shall not be used or operative in the settlement of losses on buildings, furniture and fixtures, or any property not subject to change in bulk and value. (e) Every mutual company shall cause to appear in the body of its policy the total amount for which the assured may be liable under the charter of the company. (f) The company may print on or in its policy, with the approval of the insurance commissioner, if the same is not already included in such standard form, any provision which any such corporation is required by law to insert in its policies not in conflict with the provisions of such standard form. Such provisions shall be printed apart from the other provisions, agreements, or conditions of the policy, under a separate title, as follows: "Provisions Required by Law to be Inserted in This Policy."

Rev., s. 4759; 1899, c. 54, s. 43; 1901, c. 391, s. 4; 1907, c. 800, s. 1; 1915, c. 109, s. 10.

EFFECT OF ADOPTION OF STANDARD POLICY. It does not prevent a valid contract from being made verbally or by "binding slip": *Lea v. Ins. Co.*, 168-478; but the parol contract will be construed to be for a standard policy: *Black v. Ins. Co.*, 148-169. It does not require insured to show compliance with its provisions, as that the agent had written authority: *Gazzam v. Ins. Co.*, 155-330; *Floars v. Ins. Co.*, 144-235. Nor does it prevent an assessment company from issuing an assessment policy: *Ins. Co. v. Edwards*, 124-116.

CONTRACT OF INSURANCE. The insurance policy is the contract, when there is no fraud: *Lancaster v. Ins. Co.*, 153-285. The agent should inquire as to the title to the property at the time of issuing the policy and not after loss: *Modlin v. Ins. Co.*, 151-35. A policy may be corrected for mistake as to the owner of the property insured: *McIntosh v. Ins. Co.*, 152-50. The application for insurance forms a part of the contract, and one who can read and has warranted the answers in his application to be true, will not be heard to say that he was ignorant of its contents, in the absence of fraud or mistake: *Cuthbertson v. Ins. Co.*, 96-480; *Babbitt v. Ins. Co.*, 66-70. Where insured failed to state that property was mortgaged, the policy providing that in such case it would be void, it invalidates the policy, though omission was made without intention to deceive: *Hayes v. Ins. Co.*, 132-702.

The insurance contract will be construed most favorably for the insured: *Johnson v. Ins. Co.*, 172-142; *Cottingham v. Ins. Co.*, 168-259; *Gazzam v. Ins. Co.*, 155-330; *Higson v. Ins. Co.*, 152-206; *R. R. v. Casualty Co.*, 145-114; *Jones v. Casualty Co.*, 140-262; *Bray v. Ins. Co.*, 139-390; *Rayburn v. Casualty Co.*, 138-379; *Kendrick v. Ins. Co.*, 124-315.

Policy covering drugs and other goods covers drugs in one part of store and groceries in another room: *Drug Co. v. Assurance Co.*, 110-350. Tobacco warehouseman's policy covering leaf tobacco "owned or held in trust, or on commission or sold and not delivered," construed: *Lockhart v. Cooper*, 87-149. An insurance policy in favor of husband on a house built by him on his wife's land is invalid: *McIntosh v. Ins. Co.*, 152-50. An equitable interest in property constitutes an insurable interest therein: *Gerringer v. Ins. Co.*, 133-407; *Grabbs v. Ins. Co.*, 125-389. Plaintiff, who held lands under a bond for title, had an insurable interest in the building situated thereon: *Clapp v. Ins. Assn.*, 126-388; *Jordan v. Ins. Co.*, 151-341.

A provision making encumbrances by mortgage a forfeiture is valid: *Hayes v. Ins. Co.*, 132-702; *Weddington v. Ins. Co.*, 141-234; *Modlin v. Ins. Co.*, 151-35; *Lancaster v. Ins. Co.*, 153-285; *Watson v. Ins. Co.*, 159-638; *Roper v. Ins. Co.*, 161-151. But an encumbrance operates as a forfeiture only when in existence at the time of the loss, and it suspends the policy during its existence: *Cottingham v. Ins. Co.*, 169-259. See section 6440.

As to increasing the risk by keeping benzine, "or other explosive": *Willis v. Ins. Co.*, 79-285. Stipulation in an automobile policy against using it for passenger service means the habitual use for hire: *Crowell v. Ins. Co.*, 169-35. A condition in policy that mill insured

shall be run not later than ten o'clock at night, and that a violation of this stipulation should create a forfeiture of the policy, is a substantial condition: *Alspaugh v. Ins. Co.*, 121-290.

Stipulations against taking out other insurance: *Roper v. Ins. Co.*, 161-151; *Black v. Ins. Co.*, 148-169; *Grubbs v. Ins. Co.*, 108-472; *Sugg v. Ins. Co.*, 98-143; *Grubbs v. Fire and Marine Ins. Co.*, 110-108; *Folb v. Ins. Co.*, 109-568—and as to waiver of such stipulations or conditions, see *Grubbs v. Ins. Co.*, 108-472.

A provision against transfer of interest in property is not violated by appointment of a receiver: *Pants Co. v. Ins. Co.*, 159-78; nor by an adjudication in bankruptcy in an involuntary proceeding: *Roper v. Ins. Co.*, 161-151. Commencement of foreclosure proceedings against insured property terminates the policy, there being in the policy a provision to that effect: *Hayes v. Ins. Co.*, 132-702.

Provision in a policy of fire insurance, by which, in case of loss, it is made optional with the insurer to repair, rebuild or replace the property destroyed, by giving notice within a certain time, constitutes a contract exclusively between insurer and insured; neither judgment creditor nor mortgagee can interpose to prevent its performance: *Stamps v. Ins. Co.*, 77-209.

When the contract of insurance is complete is a matter of intention of the parties: *Mfg. Co. v. Assurance Co.*, 161-88. The taking of clothing by agent of a fire insurance company in part payment of premium of a policy is a fraud upon the company, and no valid contract as to company arises therefrom: *Folb v. Ins. Co.*, 133-179.

A transfer of a policy by the president of the company is binding, though the transfer was not made according to blank form printed on back of policy: *Davis v. Ins. Co.*, 134-60. A transfer of an insurance policy to one "as his interest may appear" is valid if made with the assent of the insurer: *Fertilizer Co. v. Reams*, 105-283.

The provision that no suit shall be brought unless commenced within twelve months must be construed in connection with section 6290: *Modlin v. Ins. Co.*, 151-35.

IRON-SAFE CLAUSE; INVENTORY; BOOKS. The limitation of liability of a fire insurance company contained in the "iron-safe clause" is reasonable and valid: *Coggins v. Ins. Co.*, 144-7. A substantial compliance with this clause is sufficient: *Arnold v. Ins. Co.*, 152-232. What is substantial compliance, and meaning of terms "last preceding inventory" and "detailed itemized statement": *Ibid.*; *Coggins v. Ins. Co.*, 144-7.

In an action to recover a loss under a fire insurance policy, where iron-safe clause allows thirty days for making inventory, and books are not required to be opened until inventory is completed, defendant cannot avail itself of any alleged violation of any provision in the iron-safe clause, where fire occurred within thirty days after policy was issued: *Parker v. Ins. Co.*, 143-339; *Bray v. Ins. Co.*, 139-390.

In an action to recover a loss under a fire insurance policy, the defendant having denied its liability to the plaintiff on the policy by alleging that there was a violation of the iron-safe clause, whereby the policy became null and void, it cannot now successfully plead failure of plaintiff to file proofs of loss and defeat his recovery, as the defense is inconsistent with that of noncompliance with iron-safe clause: *Parker v. Ins. Co.*, 143-339.

When amount of insurance under the policy is specifically apportioned to building, and goods therein contained in fixed amounts as to each, and the premium is entire and risks substantially identical, obligation of insurer is single, and the insured cannot recover as to either when he fails to produce the books and inventory required by his contract of insurance: *Coggins v. Ins. Co.*, 144-7.

RIGHTS AND REMEDIES; WAIVER; ESTOPPEL; MISREPRESENTATIONS. As to the limitation of actions on policies, see *Lowe v. Accident Assn.*, 115-18; *Muse v. Assur. Corp.*, 108-240; *Gerringer v. Ins. Co.*, 133-414; *Dibbrell v. Ins. Co.*, 110-193; *Modlin v. Ins. Co.*, 151-35.

As to arbitration and award, see *Perry v. Ins. Co.*, 137-402; *Braddy v. Ins. Co.*, 115-354; *Pioneer Mfg. Co. v. Assur. Co.*, 106-28; *Herndon v. Ins. Co.*, 107-183; *Pretzfelder v. Ins. Co.*, 123-164; *Mfg. Co. v. Assur. Co.*, 106-28; *Millinery Co. v. Ins. Co.*, 160-130.

Setting aside award of arbitrators when grossly inadequate, see *Perry v. Greenwich Ins. Co.*, 137-402.

A misrepresentation by an applicant in his application as to his title to a certain portion of the property insured avoids the contract of insurance as to the entire amount of property covered by the policy: *Cuthbertson v. Ins. Co.*, 96-480. A condition which in no way contributes to the loss will not be considered a forfeiture: *Smith v. Fire Ins. Co.*, 175-314. See, also, *Cottingham v. Ins. Co.*, 168-259; *Johnson v. Ins. Co.*, 172-142.

The conditions in a policy of insurance working a forfeiture are matters of contract and not of limitation, and may be waived by the insurer, and such waiver may be presumed by the act of the local agent of the company: *Horton v. Ins. Co.*, 122-498—or may be implied from the conduct of the company: *Ins. Co. v. Ins. Co.*, 161-485, and cases cited; *Modlin v. Ins. Co.*, 151-35. The condition that a waiver by agent shall be written upon the policy fixes a rule of evidence to prove it: *Roper v. Ins. Co.*, 161-151; *Black v. Ins. Co.*, 148-169. As to effect of insurance company's knowledge or notice of facts in general, see *Cowell v. Ins. Co.*, 126-684—as to effect of knowledge of or notice to officers or agents, see *Alspaugh v. Ins. Co.*, 121-290; *Horton v. Ins. Co.*, 122-498; *Grabbs v. Ins. Assn.*, 125-389; *Clapp v. Ins. Assn.*, 126-388; *Strause v. Ins. Co.*, 128-64; *Bergeron v. Ins. and Bank Co.*, 111-45; *Sprinkle v. Ins. Co.*, 126-678; *Fishblate v. Fid. Co.*, 140-589; *Follette v. Accident Assn.*, 110-377; *McCarty v. Ins. Co.*, 126-820. Where agent's interest is in conflict: *Roper v. Ins. Co.*, 161-151.

Investigation of a loss by insurer does not waive breach of condition by insured, the policy providing that such investigation shall not operate as a waiver: *Hayes v. Ins. Co.*, 132-702. Notice that insured intended to take out additional insurance is not notice of existing insurance: *Black v. Ins. Co.*, 148-169. Notice of an intention on the part of a policyholder to do something contrary to the terms of a contract will not estop company, although not objected to by it at the time: *Weddington v. Ins. Co.*, 141-234. In case of a breach of condition which invalidates policy, company not bound to declare policy forfeited or to do or say anything to make forfeiture effectual, but can set it up in defense when policy sued on: *Ibid.* Where plaintiff signed a nonwaiver agreement, law presumes he knew what was in it, and he will not be heard, in the absence of proof of fraud or mistake, to say that he did not: *Ibid.*

Where insurance company determines to cancel a risk for nonpayment of assessment, insured is entitled to reasonable notice: *Sherrod v. Ins. Assn.*, 139-167. Where the policy so provides, a notice by the insured to cancel the policy is sufficient: *Johnson v. Ins. Co.*, 174-201.

As to waiver of proof of loss, see *Gerringer v. Ins. Co.*, 133-407; *Strause v. Ins. Co.*, 128-64; *Perry v. Ins. Co.*, 137-402; *Lanier v. Ins. Co.*, 142-14; *Parker v. Ins. Co.*, 143-339; *Mercantile Co. v. Ins. Co.*, 176-545—of defect of title to property insured: *Gerringer v. Ins. Co.*, 133-407. Proof of loss is not required when the liability is denied: *Proffitt v. Ins. Co.*, 176-680; *Higson v. Ins. Co.*, 152-206; *Jordan v. Ins. Co.*, 151-341; *Millinery Co. v. Ins. Co.*, 160-130.

The existence of an encumbrance on property insured is a most material fact, and should be communicated to the company: *Weddington v. Ins. Co.*, 141-239; *Hayes v. Ins. Co.*, 141-239; *Roper v. Ins. Co.*, 161-151. Claim by company that policy was forfeited by change of title in property: *Richardson v. Ins. Co.*, 136-314. Plaintiff depending upon agent of company to renew policy: *Rounsaville v. Ins. Co.*, 138-191. Promise of company to transfer insurance from one kind of property to another: *Wright v. Ins. Co.*, 138-488.

SUBROGATION OF INSURER. Insurer against fire paying the loss is subrogated to rights of insured and can maintain an action against the wrongdoer; and this right is independent of the policy and it is immaterial whether insured makes an actual assignment or not: *Cunningham v. R. R.*, 139-427; *Ins. Co. v. R. R.*, 132-75. When action should be in name of insurer and when in name of insured: *Powell v. Water Co.*, 171-290.

If, after knowledge of payment of loss by insurer, the wrongdoer pays the damages sustained by the destruction of the property, such payment will not bar the action of the insurer to recover upon his subrogated right: *Cunningham v. R. R.*, 139-427.

Where two mortgages were successively given on a lot upon which was a building, both with covenants that mortgagor would insure building, and mortgagor complied with covenant in first mortgage, but did not with covenant in second; the building was burned, and the first mortgagee paid by sale of the lot: Held, that second mortgagee was subrogated to rights of first mortgagee and entitled to have proceeds of policy applied to his debt: *Fitts v. Grocery Co.*, 144-463.

When mortgagee insures the property for his own benefit, the insurer paying the loss is entitled to be subrogated to the rights against the mortgagor: *Ins. Co. v. Reid*, 171-513.

The right of insurer is barred when the insured would be barred: *Ins. Co. v. R. R.*, 165-136.

6437. Form of standard policy. The standard form of policy must be plainly printed, and no part of it may be in type smaller than that used in printing the form on file in the office of the insurance commissioner, and shall be as follows:

[Space for insertion of name of company or companies issuing the policy and other matter permitted to be stated at the head of the policy.]

Amount \$..... Rate..... Premium \$.....

In consideration of the stipulations herein named and of.....
.....dollars premium does insure.....

and legal representatives, to the extent of the actual cash value (ascertained with proper deductions for depreciation) of the property at the time of loss or damage, but not exceeding the amount which it would cost to repair or replace the same with material of like kind and quality within a reasonable time after such loss or damage, without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair and without compensation for loss resulting from interruption of business or manufacture, for the term of.....
from the day of, 19...., at noon, to the day of, 19...., at noon, against all *direct loss and damage by fire* and by removal from premises endangered by fire except as herein provided, to an amount not exceeding dollars to the following described property while located and contained as described herein, or pro rata for five days at each proper place to which any of the property shall necessarily be removed for preservation from fire, but not elsewhere, to wit:

[Space for description of property.]

This policy is made and accepted subject to the foregoing stipulations and conditions, and to the stipulations and conditions printed on the back hereof, which are hereby made a part of the policy, together with such other provisions, stipulations, and conditions as may be endorsed hereon or added hereto as herein provided.

In witness whereof, this company has executed and attested these presents.

[Space for date and for signatures and titles of officers and agent.]

Fraud, misrepresentation, etc.—This entire policy is void if the insured has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof; or in case of any fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after a loss.

Property which cannot be insured.—This policy shall not cover accounts, bills, currency, deeds, evidences of debt, money, notes, or securities.

Hazards not covered.—This company shall not be liable for loss or damage caused directly or indirectly by invasion, insurrection, riot, civil war, or commotion, or military or usurped power, or by order of any civil authority; or by theft; or by neglect of the insured to use all reasonable means to save and preserve the property at and after a fire or when the property is endangered by fire in neighboring premises.

This entire policy is void, unless otherwise provided by agreement in writing added hereto—

Ownership, etc.—(a) if the interest of the insured is other than unconditional and sole ownership; or (b) if the subject of insurance is a building on ground not owned by the insured in fee simple; or (c) if, with the knowledge of the insured, foreclosure proceedings are commenced or notice given of sale of any property insured hereunder by reason of any mortgage or trust deed; or (d) if any change, other than by the death of an insured, takes place in the interest, title, or possession of the subject of insurance (except change of occupants without increase of hazard); or (e) if this policy is assigned before a loss.

Unless otherwise provided by agreement in writing added hereto, this company is not liable for loss or damage occurring—

Other insurance.—(a) while the insured has any other contract of insurance, whether valid or not, on property covered in whole or in part by this policy; or

Increase of hazard.—(b) while the hazard is increased by any means within the control or knowledge of the insured; or

Repairs, etc.—(c) while mechanics are employed in building, altering, or repairing the described premises beyond a period of fifteen days; or

Explosives, gas, etc.—(d) while illuminating gas or vapor is generated on the described premises; or while (any usage or custom to the contrary notwithstanding) there is kept, used, or allowed on the described premises fireworks, greek fire, phosphorus, explosives,

benzine, gasoline, naphtha, or any other product of petroleum of greater inflammability than kerosene oil, gunpowder exceeding twenty-five pounds, or kerosene oil exceeding five barrels; or

Factories.—(e) if the subject of insurance is a manufacturing establishment while operated in whole or in part between the hours of ten p. m. and five a. m., or while it ceases to be operated beyond a period of ten days; or

Unoccupancy.—(f) while a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of ten days; or

Excepted property.—(g) to bullion, manuscripts, mechanical drawings, dies, or patterns; or

Explosion, lightning.—(h) by explosion or lightning, unless fire ensues, and, in that event, for loss or damage by fire only.

Chattel mortgage.—Unless otherwise provided by agreement in writing added hereto this company is not liable for loss or damage to any property insured hereunder while encumbered by a chattel mortgage, and during the time of such encumbrance this company is liable only for loss or damage to any other property insured hereunder.

Fall of building.—If a building, or any material part thereof, falls, except as the result of fire, all insurance by this policy on such building or its contents immediately ceases.

Added clauses.—The extent of the application of insurance under this policy and of the contribution to be made by this company in case of loss or damage, and any other agreement not inconsistent with or a waiver of any of the conditions or provisions of the policy, may be provided for by rider added hereto.

Waiver.—No one has power to waive any provision or condition of this policy except such as by the terms of the policy is the subject of agreement added hereto, nor shall any such provision or condition be waived unless the waiver is in writing added hereto, nor shall any provision or condition of this policy or any forfeiture be waived by any requirement, act, or proceeding on the part of this company relating to appraisal or to any examination herein provided for; nor shall any privilege or permission affecting the insurance hereunder exist or be claimed by the insured unless granted herein or by rider added hereto.

Cancellation of policy.—This policy will be canceled at any time at the request of the insured, in which case the company shall, upon demand and surrender of the policy, refund the excess of paid premium above the customary short rates for the expired time. The policy may be canceled at any time by the company by giving to the insured a five days written notice of cancellation with or without tender of the excess of paid premium above the pro rata premium for the expired time, which excess, if not tendered, shall be refunded on demand. Notice of cancellation must state that the excess premium (if not tendered) will be refunded on demand.

Pro rata liability.—This company will not be liable for a greater proportion of any loss or damage than the amount hereby insured bears to the whole insurance covering the property, whether valid or not and whether collectible or not.

Noon.—The word “noon” herein means noon of standard time at the place of loss or damage.

Mortgagee.—If loss or damage is made payable, in whole or in part, to a mortgagee, this policy may be canceled as to such interest by giving to the mortgagee a ten days written notice of cancellation. Upon failure of the insured to render proof of loss, such mortgagee shall, as if named as insured hereunder, but within sixty days after such failure, render proof of loss and be subject to the provisions hereof as to appraisal and time of payment. On payment to a mortgagee of any sum for loss or damage hereunder, if this company claims that as to the mortgagor or owner no liability existed, it shall, to the extent of such payment, be subrogated to the mortgagee's right of recovery and claim upon the collateral to the mortgage debt, but without impairing the mortgagee's right to sue; or it may pay the mortgage debt and require an assignment thereof and of the mortgage. Except as stated in this paragraph, the agreement between a mortgagee and this company shall be only as stated by rider added hereto.

Requirements in case of loss.—The insured shall give immediate notice, in writing, to this company, of any loss or damage, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order,

furnish a complete inventory of the destroyed, damaged and undamaged property, stating the quantity and cost of each article and the amount claimed thereon; and the *insured shall, within sixty days after the fire, unless such time is extended in writing by this company, render to this company a proof of loss*, signed and sworn to by the insured, stating the knowledge and belief of the insured as to the time and origin of the fire; the interest of the insured and of all others in the property; the cash value of each item thereof, and the amount of loss or damage thereto; all encumbrances thereon; all other contracts of insurance, whether valid or not, covering any of said property; and a copy of all the descriptions and schedules in all policies; any changes in the title, use, occupation, location, possession, or exposures of said property since the issuing of this policy; and by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of fire; and shall furnish, if required, verified plans and specifications of any building, fixtures, or machinery destroyed or damaged. The insured, as often as is reasonably required, shall exhibit to any person designated by this company all that remains of any property herein described, and submit to examinations under oath by any person named by this company, and subscribe the same; and, as often as is reasonably required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof, if originals are lost, at such reasonable time and place as is designated by this company or its representative, and shall permit extracts and copies thereof to be made.

Appraisal.—In case the insured and this company fail to agree as to the amount of loss or damage, each shall, on the written demand of either, select a competent and disinterested appraiser. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen days to agree upon such umpire, then, on request of the insured or this company, the umpire shall be selected by a judge of a court of record in the state in which the property insured is located. The appraisers shall then appraise the loss and damage, stating separately sound value and loss or damage to each item; and failing to agree, shall submit their differences only to the umpire. An award in writing, so itemized, of any two, when filed with this company, shall determine the amount of sound value and loss or damage. Each appraiser shall be paid by the party selecting him, and the expenses of appraisal and umpire shall be paid by the parties equally.

Company's options.—It is optional with this company to take all, or any part, of the articles at the agreed or appraised value, and also to repair, rebuild, or replace the property lost or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention so to do within thirty days after the receipt of the proof of loss herein required; but

Abandonment.—There can be no abandonment to this company of any property.

When loss payable.—The amount of loss or damage for which this company may be liable shall be payable sixty days after proof of loss, as herein provided, is received by this company and ascertainment of the loss or damage is made either by agreement between the insured and this company expressed in writing or by the filing with this company of an award as herein provided.

Suit.—No suit or action on this policy, for the recovery of any claim, shall be sustainable in any court of law or equity unless the insured has complied with all the requirements of this policy, nor unless commenced within twelve months next after the fire.

Subrogation.—This company may require from the insured an assignment of all right of recovery against any party for loss or damage to the extent that payment therefor is made by this company.

Standard Fire Insurance Policy of the State of	
Expires .....	.....
Property .....	.....
Amount	\$.....
Premium	\$.....
No.....	

It is important that the written portions of all policies covering the same property read exactly alike. If they do not, they should be made uniform at once.

Rev., s. 4760; 1899, c. 54, s. 43; 1901, c. 391, s. 4; 1915, c. 109, s. 9.

See annotations under section 6436.

6438. Size of policy; notice; umpire; statement and blanks. No provisions of this chapter limit insurance companies to the use of any particular size or manner of folding the paper upon which their policies are issued. If notice in writing signed by the insured, or his agent, is given before loss or damage by fire to the agent of the company of any fact or condition stated in paragraphs (a), (b), (c), (d), (e), (f), of the foregoing form of policy, it is equivalent to an agreement in writing added thereto, and has the force of the agreement in writing referred to in the foregoing form of policy with respect to the liability of the company and the waiver; but this notice does not affect the right of the company to cancel the policy as therein stipulated.

The resident judge of the superior court of the district in which the property insured is located is designated as the judge of the court of record to select the umpire referred to in the foregoing form of policy. When any company demands or requires the insured, under any fire insurance policy, to furnish a statement in writing as prescribed in the standard policy form, after a fire or loss occurs, the company or its representative shall furnish to the insured a blank or blanks in duplicate to be used for the purpose, which blanks shall be of standard form such as the insurance commissioner has approved. The failure to furnish these blanks is a waiver of the provision requiring such statement.

Rev., s. 4761; 1899, c. 54, s. 43; 1907, c. 578, s. 1; 1915, c. 109, s. 11.

See section 6439. Action cannot be brought on policy until proof of loss made or waived: *Perry v. Ins. Co.*, 137-402; *Gerringer v. Ins. Co.*, 133-407; *Strause v. Ins. Co.*, 128-64; *Lanier v. Ins. Co.*, 142-14; *Parker v. Ins. Co.*, 143-339; *Mercantile Co. v. Ins. Co.*, 176-545. Waiver of proof of loss by agreement to arbitrate: *Perry v. Ins. Co.*, 137-402.

The denial of liability by a fire insurance company dispenses with necessity of filing proofs of loss: *Gerringer v. Ins. Co.*, 133-407; *Jordan v. Ins. Co.*, 151-341; *Higson v. Ins. Co.*, 152-206; *Millinery Co. v. Ins. Co.*, 160-130; *Proffitt v. Ins. Co.*, 176-680.

6439. Penalty for issuing policy not of standard form. Any insurance company which causes to be issued, and any agent who makes, issues, or delivers a policy of fire insurance other than of the standard form, in wilful violation of this chapter, shall forfeit for each offense not less than fifty nor more than two hundred dollars; but the policy shall be binding upon the company issuing it.

Rev., ss. 4762, 4833; 1899, c. 54, s. 44.

This does not make policy void: *Roper v. Ins. Co.*, 161-151; *Black v. Ins. Co.*, 148-169.

6440. Effect of failure to give notice of encumbrance. No policy of insurance issued upon any property shall be held void because of the failure to give notice to the company of a mortgage or deed of trust existing thereon or thereafter placed thereon, except during the life of the mortgage or deed of trust.

1915, c. 109, s. 4.

See *Cottingham v. Ins. Co.*, 168-259. See, also, under section 6436.

6441. Additional or coinsurance clause. No fire insurance company licensed to do business in this state may issue any policy or contract of insurance covering property in this state which shall contain any clause or provision requiring the insured to take out or maintain a larger amount of insurance than that expressed in such policy, nor in any way provide that the insured shall be liable as a co-insurer with the company issuing the policy for any part of the loss or damage which may be caused by fire to the property described in such policy, and any

such clause or provision shall be null and void, and of no effect: Provided, the coinsurance clause or provision may be written in or attached to a policy or policies issued when the insured or his agent shall, in writing, request such coinsurance clause or provision, and in which case the rate for the insurance, with and without the coinsurance clause, shall be furnished the owner, and where the owner elects to have his insurance property written with coinsurance, then all policies on the property shall be so written, and there shall be stamped on them the words "coinsurance contract."

1915, c. 109, s. 5.

ART. 19. DEPOSITS BY FOREIGN FIRE INSURANCE COMPANIES

6442. Amount and nature of deposits required. Unless otherwise provided in this article, every fire insurance company chartered by any other state or foreign government shall, by their general agent or through some authorized officer, deliver under oath to the insurance commissioner of this state a statement of the amount of capital stock of the company, and deposit with him bonds of the United States, or of the state of North Carolina, or of the cities or counties of this state, or first mortgages on real estate situated in this state to be approved by the insurance commissioner, as follows: Companies whose capital stock is five hundred thousand dollars or less, ten thousand dollars; companies whose capital stock is more than five hundred thousand dollars and not over one million dollars, twenty thousand dollars; companies whose capital stock is in excess of one million dollars, twenty-five thousand dollars; and the insurance commissioner shall thereupon give the agent a receipt for the same. With securities so deposited the company shall at the same time deliver to the insurance commissioner a power of attorney authorizing him to transfer said securities or any part thereof for the purpose of paying any of the liabilities provided for in this article. The insurance commissioner shall require each company to make good any depreciation or reduction in value of the securities. The securities required to be deposited by each insurance company in this article shall be delivered for safe-keeping by the insurance commissioner to the treasurer of the state, who shall receipt him therefor. For securities so deposited the faith of the state is pledged that they shall be returned to parties entitled to receive them or disposed of as hereinafter provided for. The securities deposited by any company under this article shall not, on account of such securities being in the state, be subjected to taxation, but shall be held exclusively and solely for the protection of contract holders.

1909, c. 923, s. 1; 1911, c. 164, s. 1; Ex. Sess. 1913, c. 62, ss. 1, 2, 3; 1915, c. 166, s. 6.

6443. Right of company to receive interest on deposits. The insurance commissioner, at the time of receiving the securities, shall give to the company authority to draw the interest thereon, as the same may become due and payable, for the use of the company, and this authority shall continue in force until the company fails to pay any liability arising upon any policy made in favor of any person, firm, or corporation which shall be, at the time the liability arises, a resident of this state, or which shall own property in the state covered by policies issued. In case of such failure the corporation charged with the payment of such interest

shall be forthwith notified, and thereafter the interest, so long as the liability exists, shall be payable to the insurance commissioner, to be applied, if necessary, to the payment of such liability.

1909, c. 923, s. 2.

6444. Sale of deposits for payment of liabilities. If the company fails to pay any of its liabilities on its contracts according to the terms thereof, after the liabilities have been adjusted between the parties in the manner prescribed by the contracts, if any manner is prescribed thereby, or after the same have been ascertained in any manner agreed upon by the parties or by the judgment, order, or decree of the court having jurisdiction of the subject, the insurance commissioner shall, upon application of the party to whom the debt or money is due, and upon satisfactory proof that the notice herein required has been given to the company, proceed to sell at public auction such an amount of the securities as, with the interest in his hands, will pay the sum due and expenses of sale, and out of the proceeds of sale pay said sums and expenses; and the company shall be required forthwith to make good any deficit in the amount of the deposit caused by such sale. The party making application shall give to the company or to its agent in this state twenty days notice of his intention to apply to the insurance commissioner for the sale of securities. The insurance commissioner shall advertise the sale of the securities for thirty days prior to the day of sale in some daily newspaper published in the city of Raleigh, and shall state in the advertisement the securities to be sold and the company depositing them, and shall mail a copy to the company.

1909, c. 923, s. 3.

6445. Lien of policyholders; action to enforce. Upon the securities deposited with the insurance commissioner by any such insurance company, the holders of all contracts of the company who are citizens or residents of this state at such time, or who hold policies issued upon property in the state, shall have a lien for the amounts due them, respectively, under or in consequence of such contracts for losses, equitable values, return premiums, or otherwise, and shall be entitled to be paid ratably out of the proceeds of said securities, if such proceeds be not sufficient to pay all of said contract holders. When any company depositing securities as aforesaid becomes insolvent or bankrupt or makes an assignment for the benefit of its creditors, any holder of such contract may begin an action in the superior court of the county of Wake to enforce the lien for the benefit of all the holders of such contracts. The insurance commissioner shall be a party to the suit, and the funds shall be distributed by the court, but no cost of such action shall be adjudged against the insurance commissioner.

1909, c. 923, s. 4.

6446. Substitution for securities paid. Where the principal of any of the securities so deposited is paid to the insurance commissioner, he shall notify the company or its agent in this state, and pay the money so received to the company upon receiving other securities of the character named in this article to an equal amount, or, upon the failure of the company for thirty days after receiving notice

to deliver such securities to an equal amount to the insurance commissioner, he may invest the money in any such securities and hold the same as he held those which were paid.

1909, c. 923, s. 5.

6447. Return of deposits. If such company ceases to do business in this state, and its liabilities, whether fixed or contingent upon its contracts, to persons residing in this state or having policies upon property situated in this state have been satisfied or have been terminated, upon satisfactory evidence of this fact to the insurance commissioner the state treasurer shall deliver to such company, upon the order of the insurance commissioner, the securities in his possession belonging to it, or such of them as remain after paying the liabilities aforesaid.

1909, c. 923, s. 6.

6448. Deposit required before license granted; exception. When any fire insurance company files an application with the insurance commissioner to be admitted to do business in this state, he shall require of it a compliance with the provisions of this article before issuing a license to such company; but this article shall not apply to companies licensed to do a reinsurance business only.

1909, c. 923, s. 7; 1915, c. 166, s. 6.

ART. 20. INSURING STATE PROPERTY

6449. Insurance commissioner to procure insurance. It is the duty of the insurance commissioner to prepare a schedule of the different properties of the state and to procure policies of insurance thereon according to these schedules for such amounts as he is able to provide for with the provisions and appropriations for the insurance of state property, and to inspect and pass upon all policies of insurance issued upon the public buildings or other property belonging to the state, as regards the form of contract, rate, description, and such other things as are necessary to have the policies in proper form. He shall keep a record in his department, showing the number and date of policy, the name of company, the amount insured, the amount of premium, date of expiration, the property insured, and its location.

Rev., s. 4825; 1901, c. 710, ss. 1, 2; 1903, c. 771, s. 1; 1905, c. 441.

6450. Payment of premiums by state treasurer. When the insurance commissioner has placed the insurance on state property as provided for in this article and approved the bill for the same, the auditor shall issue his warrant on the state treasurer for the bill, and it is the duty of the treasurer to pay the same out of funds not otherwise appropriated to an amount not exceeding twenty thousand dollars annually; but this shall not apply to insurance on property of, or in charge of, the agricultural department and state's prison.

Rev., s. 4827; 1905, c. 441, s. 2; 1919, c. 155.

6451. Payment of premiums by officers in charge. The insurance on the property of, or in charge of, the agricultural department and the state's prison shall be for the amount agreed upon by the insurance commissioner and the officer or officers having such property in charge, and the premiums shall be paid out of the special funds of the agricultural department and state's prison on the order

of the insurance commissioner. Before such board, public officer, or other person charged with the custody or safe-keeping of any public building or other property of the state may pay any sum of money as premium for a policy of insurance thereon, they shall receive and file among their records a certificate of the insurance commissioner that he has examined and approved of the policies of insurance, giving the number, amount, date, and term of such policies, the property covered, and the names of the companies in which they are written.

Rev., ss. 4826, 4827; 1901, c. 710, ss. 1, 2; 1903, c. 771, ss. 2, 3; 1905, c. 441, s. 2.

6452. Information furnished commissioner by officers in charge. It is the duty of the different officers or boards having in their custody any property belonging to the state to inform the commissioner, giving him in detail a full description of same, and to keep him informed of any changes in such property or its location or surroundings.

Rev., s. 4828; 1901, c. 710, ss. 1, 2; 1903, c. 771, s. 2.

6453. Commissioner to inspect state property; plans submitted. It is the duty of the commissioner at least once in each year, or oftener, if deemed necessary, to visit, inspect, and thoroughly examine each state institution or other state property with a view to its protection from fire, as well as to the safety of its inmates or the property therein in case of fire, and call to the attention of the board or officer having the same in charge any defect noted by him or any improvement deemed necessary. No board, commission, superintendent, or other person or persons authorized and directed by law to select plans and erect buildings for the use of the state of North Carolina or any institution thereof or for the use of any county, city, or incorporated town or school district shall receive and approve of any plans until they are submitted to and approved by the insurance commissioner of the state as to the safety of the proposed buildings from fire, as well as the protection of the inmates in case of fire.

Rev., s. 4829; 1901, c. 710, ss. 1, 2; 1903, c. 771, s. 3; 1909, c. 880; 1919, c. 186, s. 3.

6454. Report required of commissioner. The insurance commissioner must submit annually to the governor a full report of his official action under this article, with such recommendations as commend themselves to him, and it shall be embodied in or attached to his biennial report to the general assembly.

Rev., s. 4830; 1901, c. 710, ss. 1, 2; 1903, c. 771, s. 4.

SUBCHAPTER IV. LIFE INSURANCE

ART. 21. GENERAL REGULATIONS OF BUSINESS

6455. Life insurance company defined; requisites of contract. All corporations, associations, partnerships, or individuals doing business in this state, under any charter, compact, agreement, or statute of this or any other state, involving the payment of money or other thing of value to families or representatives of policy and certificate holders or members, conditioned upon the continuance or cessation of human life, or involving an insurance, guaranty, contract, or pledge for the payment of endowments or annuities, or who employ agents to solicit business, are life insurance companies, in all respects subject to the laws herein made and provided for the government of life insurance companies, and shall not make

any such insurance, guaranty, contract, or pledge in this state with any citizen, or resident thereof, which does not distinctly state the amount of benefits payable, the manner of payment, and the consideration therefor.

Rev., s. 4773; 1899, c. 54, s. 55.

[Cases involving contracts for life insurance are placed under this section as a convenient place for reference.]

CONTRACTS OF LIFE INSURANCE. The insurance policy is the contract in the absence of fraud: *Lancaster v. Ins. Co.*, 153-285. An oral contract of insurance is valid unless otherwise required by statute: *Morgan v. Fraternal Assn.*, 170-75. The oral contract merges into the written policy subsequently accepted by the insured, and the rights of the parties must be determined by its terms and conditions: *Floars v. Ins. Co.*, 144-232; *Graham v. Ins. Co.*, 176-313. But parol agreement is not merged in an insurance contract changed by fraud or mistake: *Gwaltney v. Ins. Co.*, 132-925; s. c., 134-552. Meaning and effect of "binding slip" before policy is issued: *Gardner v. Ins. Co.*, 163-367. Effect of marginal notes and pasters on policy: *Blount v. Fraternal Assn.*, 163-167; *Waters v. Annuity Co.*, 144-663.

An insurance policy may be corrected for mistake: *Britton v. Ins. Co.*, 165-149. An application for a policy forms part of insurance contract, and one who can read and has warranted the answers in his application to be true, will not be heard to say he was ignorant of its contents, in the absence of fraud or mistake: *Cuthbertson v. Ins. Co.*, 96-480; see *Bobbitt v. Ins. Co.*, 66-70. As to misrepresentations of agents to secure the application, see *McGowan v. Ins. Co.*, 141-367; *Sykes v. Ins. Co.*, 148-13. As to misrepresentations by applicant to secure the insurance, see section 6289.

A valid contract for insurance may be enforced and an illegal collateral agreement disregarded: *Annuity Co. v. Costner*, 149-293.

The policyholder must have an insurable interest in the life of the insured: *Trinity College v. Ins. Co.*, 113-244; *Burbage v. Windley's Exrs.*, 108-357. As to insurable interest of one partner in the life of his copartner, see *Powell v. Dewey*, 123-103; *Grabbs v. Ins. Assn.*, 125-389. A creditor insuring life of his debtor: *Maynard v. Ins. Co.*, 132-711. A corporation insuring life of its president: *Trust Co. v. Ins. Co.*, 173-558; *Victor v. Mills*, 148-107; *Victor v. Mfg. Co.*, 148-119; see section 1126. Relation of uncle and nephew does not of itself create an insurable interest: *Hardy v. Ins. Co.*, 152-286. A policy of life insurance taken out in good faith, and premium thereon paid by insured, is valid, though beneficiary has no insurable interest in life of insured: *Albert v. Ins. Co.*, 122-92; discussed in *Hinton v. Ins. Co.*, 135-314. A transfer of a policy in good faith to one not having an insurable interest is valid: *Johnson v. Ins. Co.*, 157-106; *Hardy v. Ins. Co.*, 152-286; s. c., 154-430.

An insurance policy takes effect from its date, unless it is stated that it shall only take effect upon certain conditions, and upon certain conditions being met, if it is delivered, it takes effect as of the day of its date: *Rayburn v. Casualty Co.*, 138-379; *Wilkie v. Ins. Co.*, 146-513. Where insurance is applied for and afterwards a policy is issued and delivered, it is based on the status of the insured at the time of application, and the company assumes risk after date of policy: *Rayburn v. Casualty Co.*, 138-379; *Grier v. Ins. Co.*, 132-542.

Delivery of policy, in absence of fraud, is conclusive proof that contract is complete, and is an acknowledgment that premium was properly paid during good health, and in such case policy takes effect from its date: *Waters v. Annuity Co.*, 144-663; *Rayburn v. Casualty Co.*, 138-379, 141-425; *Grier v. Ins. Co.*, 132-542; *Kendrick v. Ins. Co.*, 124-315; *Wilkie v. Ins. Co.*, 146-513; *Powell v. Ins. Co.*, 153-124; *Hardy v. Ins. Co.*, 152-286; s. c., 154-430; *Pender v. Ins. Co.*, 163-98; *Murphy v. Ins. Co.*, 167-334; *Trust Co. v. Ins. Co.*, 173-558; *Britton v. Ins. Co.*, 165-149. Delivery is a question of intent, and may be indicated in several ways: *Waters v. Annuity Co.*, 144-663. An actual delivery may be explained or qualified, and the burden is upon the insurer: *Ibid.*; *Rayburn v. Casualty Co.*, 138-379; s. c., 141-425.

Payment of premium may be a condition upon which the policy is to take effect or continue in force: *Owens v. Ins. Co.*, 173-373; *Murphy v. Ins. Co.*, 167-334; *Ormond v. Life Assn.*, 96-158; *Perry v. Ins. Co.*, 150-143; *Clifton v. Ins. Co.*, 168-499. What amounts to payment: *Melvin v. Ins. Co.*, 150-398; *Sexton v. Ins. Co.*, 157-142; s. c., 160-597; *Clifton v. Ins. Co.*, 168-499; *Matthews v. Ins. Co.*, 147-339; *Hollowell v. Ins. Co.*, 126-398; *Kendrick v. Ins. Co.*, 124-315; *Jones v. Ins. Co.*, 122-578. Delivery of policy is prima facie evidence of payment: *Britton v. Ins. Co.*, 165-149; *Page v. Ins. Co.*, 131-115, and cases cited in preceding paragraph. There may be a waiver of the condition of payment; *Owens v. Ins. Co.*, 173-373;

Murphy v. Ins. Co., 167-334. What will or will not constitute a waiver: Clifton v. Ins. Co., 168-499; Matthews v. Ins. Co., 147-339; Ormond v. Life Assn., 96-158.

Where policy, with premium receipt attached, which was signed by president of company and recited that it must be countersigned by agent when premium paid, were forwarded to insured, but agent had never countersigned receipt: Held, that this was a declaration that required payment had not been made and must be made before policy could become effectual: Ormond v. Life Assn., 96-158.

Contract of fraternal insurance as to payment of dues: Page v. Junior Order, 153-404.

Where application for policy was made and premium paid agent, which application and premium were held by company for over two months, when applicant died: Held, under the terms of the application in this case, no contract of insurance was entered into: Ross v. Ins. Co., 124-395.

Where less than premium paid and company withdrew policy, under the provisions of the application and the circumstances of this case there was no binding contract of insurance: Ray v. Ins. Co., 126-166.

Where life insurance premium payable in quarterly installments and insured died after payment of first installment, the insurer was entitled to set-off against the amount of the policy the remaining installments for the current year: Albert v. Ins. Co., 122-92.

A general agent of an insurance company may waive any stipulation in a policy, notwithstanding a clause in the policy forbidding it: Gwaltney v. Assurance Society, 132-925; Davis v. Ins. Co., 134-60; Grabbs v. Ins. Co., 125-389; Floars v. Ins. Co., 144-232; Hardy v. Ins. Co., 154-430; s. c., 152-286. Promise by general agent that premiums would not be raised held not unreasonable in this case: Gwaltney v. Assur. Soc., 134-552, 132-925. Instructions to agent, of which insured had no knowledge, are not binding on the latter: Kendrick v. Ins. Co., 124-315. As to mistakes made by agents having no authority to issue policies, see Floars v. Ins. Co., 144-232.

Where a health policy insured against certain named diseases, including blood poisoning, and a proviso declared that the policy should not apply to any disease which was the result of injury, the proviso was imperative as to blood poisoning, which always results from injury: Jones v. Casualty Co., 140-262.

Stipulations against suicide are valid: Heilig v. Ins. Co., 162-521; Thaxton v. Ins. Co., 143-33; Spruill v. Ins. Co., 120-141—but may be waived and are waived under further stipulation that after three years policy incontestable: Simpson v. Ins. Co., 115-393. But a life insurance policy does not apply to death as a punishment for crime: Scarborough v. Ins. Co., 171-353.

Where policy bound company to pay a certain designated amount on certain conditions to a specified beneficiary, it constituted a contract directly between company and beneficiary: Lanier v. Ins. Co., 142-14. Policy payable to children of insured includes children subsequently born as well as those living at date of policy: Scull v. Ins. Co., 132-30.

Where a policy provides that company will, upon death of insured, pay not exceeding \$5,000, and it receives premiums on the full amount, the policy is in legal effect for \$5,000: Makely v. Legion of Honor, 133-368.

A provision in a benefit policy that one becomes a member subject to the power of the corporation to change its by-laws cannot be construed into a permission to the corporation to change its contract made with a policyholder at will: Bragaw v. Knights of Honor, 128-354; Williams v. Order of Heptasophs, 172-787; Wilson v. Order of Heptasophs, 174-628.

Policy must be liberally construed so as to take in as many of the objects of assured's bounty as possible: Scull v. Ins. Co., 132-33. Where contract of insurance reasonably susceptible of two constructions, that one most favorable to the insured should be adopted: Trust Co. v. Ins. Co., 173-558; Jones v. Casualty Co., 140-262; Rayburn v. Casualty Co., 138-379; Kendrick v. Ins. Co., 124-315—and this is the rule also where intention of parties is in doubt; Bray v. Ins. Co., 139-390; see Railroad v. Casualty Co., 146-114. Construction of terms of policy upon the "quarterly renewable term plan with participating premiums," which provided that after insured attained the age of sixty years the policy could be exchanged for one on the level or uniform plan, policy reciting the level premium scale which concluded with the words, "etc., etc., etc.": Jones v. Assur. Soc., 147-540.

As to how the question whether applicant has been "under the care of a physician" within a given length of time should be answered by the applicant, see Bryant v. Ins. Co., 147-181.

The thirty days grace for the payment of premiums allowed in an insurance policy does not continue the force of the policy for thirty days, but simply gives to insurer thirty days grace for him to pay and prevent a forfeiture: *Wilkie v. Ins. Co.*, 146-513.

Meaning and effect of incontestable clause: *Trust Co. v. Ins. Co.*, 173-558. Extension of life of policy: *Underwood v. Ins. Co.*, 177-327, and cases cited. Effect of change of beneficiary, or assignment of policy as security for debt: *Ibid.*

AS TO RIGHTS AND REMEDIES GENERALLY; WAIVER; MISREPRESENTATIONS. Failure to read policy or to examine it for three months is a waiver of any right to reform the policy on the ground of mistake: *Floars v. Ins. Co.*, 144-232; *Catheart v. Ins. Co.*, 144-625.

An illiterate person does not waive his right, by accepting a policy and paying premium thereon, to set up fraudulent representations of agent which induced him to take out the policy, he having read the policy without understanding it, and subsequent to accepting it having been assured by the agent that the policy was such as he had represented it to be: *Sikes v. Ins. Co.*, 144-626; *Whitehurst v. Ins. Co.*, 149-273.

As to remedy for wrongful cancellation of life policy, see *Green v. Ins. Co.*, 139-309, and cases cited on page 313; *Gwaltney v. Ins. Soc.*, 132-925; *Smallwood v. Ins. Co.*, 133-15; *Scott v. Life Assn.*, 137-515; *Perry v. Ins. Co.*, 137-402; *Makeley v. Legion of Honor*, 133-367; *Strauss v. Life Assn.*, 128-465, 126-971; *Burrus v. Ins. Co.*, 124-9; *Braswell v. Ins. Co.*, 75-8; *Williams v. Order of Heptasophs*, 172-787; *Wilson v. Order of Heptasophs*, 174-628.

Different remedies of insured for breach of insurance contract under incontestable clause: *Trust Co. v. Ins. Co.*, 173-558. The remedy of the insurer is by action for cancellation, and not by simple notice: *Ibid.* For the insured to make an application for reinstatement, when policy has been improperly canceled, is not an abandonment or waiver: *Aiken v. Ins. Co.*, 173-400. Evidence tending to show a waiver of right to cancel policy: *Horton v. Ins. Co.*, 122-498. Waiver by accepting check, when notice stated payment must not be made by check: *Hollowell v. Ins. Co. of Va.*, 126-398.

As to limitation as to time within which action must be brought, see *Lowe v. Accident Assn.*, 115-18; *Muse v. Assur. Corp.*, 108-240; *Gerringer v. Ins. Co.*, 133-414; *Dibbrell v. Ins. Co.*, 110-193.

Recital of receipt of first premium an estoppel as to contract, but not in an action to recover it: *Kendrick v. Ins. Co.*, 124-315; *Grier v. Ins. Co.*, 132-542.

Forfeiture of policy is not favored: *Hollowell v. Ins. Co.*, 126-398.

Effect of knowledge of company, or company's officers or agent of defects, misrepresentations, etc., see *Fishplate v. Fid. Co.*, 140-589; *Cowell v. Ins. Co.*, 126-684; *Alspaugh v. Ins. Co.*, 121-290; *Horton v. Ins. Co.*, 122-498; *Grabbs v. Ins. Assn.*, 125-389; *Clapp v. Ins. Assn.*, 126-388; *Strause v. Ins. Co.*, 128-64; *Bergeron v. Ins. and Bank Co.*, 111-45; *Sprinkle v. Ins. Co.*, 126-678; *Follette v. Accident Assn.*, 110-377; *McCarty v. Ins. Co.*, 126-820.

As to whether there was a misrepresentation in the application for insurance is a question for the jury upon a proper issue: *Bryant v. Ins. Co.*, 147-181.

Receipt of insurance policy, under the circumstances of this case, without reading it, does not bind the assured so as to prevent him from proving a parol agreement between himself and the agent of the company: *Gwaltney v. Assur. Soc.*, 132-925—but he may, by his conduct, waive his right under such parol agreement, see *Catheart v. Ins. Co.*, 144-623.

As to reformation of policy and suit for damages thereon, see *Floars v. Ins. Co.*, 144-232. Where policy was susceptible to two constructions, and insurance agent gave it one, and insured was misled thereby, the company could not claim forfeiture because insured did not follow the other construction: *Kendrick v. Ins. Co.*, 124-315. As to effect of agent's insertion of false answers in application, see *Sprinkle v. Indemnity Co.*, 124-405.

Proof of loss waived when agent denies liability of company and refuses to send blank proof of loss to beneficiary: *Lanier v. Ins. Co.*, 142-14; see, also, *Thaxton v. Ins. Co.*, 143-33.

Voluntary payment of premiums made by the insured with full knowledge of the facts cannot be recovered by him: *Jones v. Assur. Soc.*, 147-540. Payment induced by fraud or misrepresentation may be recovered: *Stroud v. Ins. Co.*, 148-54; but otherwise where applicant was not deceived: *Frazell v. Ins. Co.*, 153-60.

6456. Foreign companies; requirements for admission. A company organized under the laws of any other of these United States for the transaction of life

insurance may be admitted to do business in this state if it complies with the other provisions of this chapter regulating the terms and conditions upon which foreign life insurance companies may be admitted and authorized to do business in this state, and, in the opinion of the insurance commissioner, is in sound financial condition and has policies in force upon not less than five hundred lives for an aggregate amount of not less than five hundred thousand dollars. Any life company organized under the laws of any other country than the United States, in addition to the above requirements, must make and maintain the deposit required of such companies by article four of this chapter.

Rev., s. 4774; 1899, c. 54, s. 56.

6457. Soliciting agent represents the company. A person who solicits an application for insurance upon the life of another, in any controversy relating thereto between the insured or his beneficiary and the company issuing a policy upon such application, is the agent of the company and not of the insured.

1907, c. 958, s. 1.

6458. Discrimination between insurants forbidden. A life insurance company doing business in this state shall not make any distinction or discrimination in favor of individuals between insurants of the same class and equal expectation of life in the amount of payment of premiums or rates charged for policies of life or endowment insurance, or in the dividends or other benefits payable thereon, or in any of the terms and conditions of the contracts it makes; nor shall any such company or any agent thereof make any contract of insurance or agreement as to such contract other than as plainly expressed in the policy issued thereon, nor pay or allow as inducement to insurance any rebate of premium payable on the policy, or any special favor or advantage in the dividends or other benefit to accrue thereon, or any valuable consideration or inducement whatever not specified in the policy contract of insurance; nor give, sell, or purchase, or offer to give, sell, or purchase as inducement to insurance or in connection therewith any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits to accrue therein, or anything of value whatsoever not specified in the policy.

Rev., s. 4775; 1899, c. 54, s. 57; 1903, c. 438, ss. 5, 10; 1911, c. 196, s. 7.

The contract is to be expressed in the policy: *Graham v. Ins. Co.*, 176-313. This section operates against the insurer and not the insured: *Robinson v. Life Co.*, 163-415. If the contract is illegal the insured may recover the money paid: *Ibid.* But insured cannot enforce a collateral agreement which violates this section: *Smathers v. Ins. Co.*, 151-98. A regular life policy will not be affected by a collateral illegal agreement: *Annuity Co. v. Costner*, 149-293.

6459. Misrepresentations of policy forbidden. No life insurance company doing business in this state, and no officer, director, solicitor, or other agent thereof, shall make, issue, or circulate, or cause to be made, issued, or circulated any estimate, illustration, circular, or statement of any sort misrepresenting the terms of the policy issued by it or the dividends or share of surplus to be received thereon, or shall use any name or title of any policy or class of policies misrepresenting the true nature thereof. Nor shall any such company, agent, or broker make any

misrepresentation to any person insured in said company or in any other company for the purpose of inducing or tending to induce such person to lapse, forfeit, or surrender his said insurance.

1913, c. 95.

6460. Medical examination required. No life insurance company organized under the laws of or doing business in this state shall enter into any contract of insurance, in an amount equal to or exceeding three hundred dollars, upon lives within this state without having previously made or caused to be made a prescribed medical examination of the insured by a registered medical practitioner. This section shall not apply to contracts of insurance issued under the group plan.

Rev., s. 4779; 1899, c. 54, s. 58; 1903, c. 438, s. 5; 1919, c. 186, s. 5.

6461. Domestic companies to report outstanding policies; reinsurance fund calculated. It is the duty of every life insurance company incorporated by the laws of this state to make returns in January of each year to the insurance commissioner, showing all its policies and annuity bonds in force on the first day of that month, with such particulars of the same as are necessary for the valuation thereof as hereinafter directed. The insurance commissioner shall thereupon compute, or cause to be computed, the value of such policies and bonds, or what is known as the reinsurance fund therefor, according to the American experience table of mortality and interest at the rate of four and a half per centum, or according to the actuaries' mortality and four per centum interest, or according to any other recognized standard of valuation as he deems best for the security of the business and the safety of the persons insured. Upon this valuation being made and a certificate thereof furnished by the insurance commissioner, each company shall pay to such officer, to defray the expense thereof, the sum of one cent for every thousand dollars of the whole amount insured by its policies so valued. The reserve fund hereinbefore provided for shall not be available for or used for any other purpose than the discharge of policy obligations, but is a trust fund to be held and expended only for the benefit of policyholders. In case of the insolvency of the company, the reserve on outstanding policies may, with the consent of the insurance commissioner, be used for the reinsurance of its policies to the extent of their pro rata part thereof.

Rev., s. 4777; 1903, c. 536, s. 4; 1905, c. 410; 1907, c. 1000, s. 7.

6462. Reinsurance of risks regulated. No domestic life insurance company may reinsure its risks without the permission of the insurance commissioner, except to the extent of one-half of any individual risk. The receiver of any life insurance company organized under the laws of this state, when the assets of the company are sufficient for that purpose, and the consent of two-thirds of its policyholders has been secured in writing, may reinsure all the policy obligations of such company in some other solvent life insurance company, or, when the assets are insufficient to secure the reinsurance of all the policies in full, he may reinsure such a percentage of each and every policy outstanding as the assets will secure; but there must be no preference or discrimination as against any policyholder, and the contract for such reinsurance by the receiver must be approved by the insurance commissioner of this state before it has effect.

Rev., s. 4778; 1899, c. 54, s. 58; 1903, c. 536, s. 9.

6463. Punishment for violation of law as to reinsurance and medical examination. If any domestic life insurance company shall reinsure its risks, except by permission of the insurance commissioner, exceeding one-half of any individual risk, or if any life insurance company organized under the laws of, or doing business in, this state shall enter into any contract of insurance upon lives within this state without having previously made or caused to be made a prescribed medical examination of the insured by a registered medical practitioner, such insurance company, or any officer, agent, or other person soliciting or effecting, or attempting to effect, a contract of insurance contrary to this section, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding one hundred dollars for each offense.

Rev., s. 3497; 1899, c. 54, s. 58.

6464. Rights of beneficiaries. When a policy of insurance is effected by any person on his own life, or on another life in favor of some person other than himself having an insurable interest therein, the lawful beneficiary thereof, other than himself or his legal representatives, are entitled to its proceeds against the creditors and representatives of the person effecting the insurance. The person to whom a policy of life insurance is made payable may maintain an action thereon in his own name. Every policy of life insurance made payable to or for the benefit of a married woman, or after its issue assigned, transferred, or in any way made payable to a married woman, or to any person in trust for her or for her benefit, whether procured by herself, her husband, or by any other person, and whether the assignment or transfer is made by her husband or by any other person, inures to her separate use and benefit and to that of her children, if she dies in his lifetime.

Rev., ss. 4771, 4772; Const., Art. X, s. 7; 1899, c. 54, s. 59.

The general rule is that the beneficiary of an ordinary life policy has a vested interest and acquires the entire property interest in the contract the moment the policy is executed and delivered: *Lanier v. Ins. Co.*, 142-15.

The proceeds of a policy of insurance on the life of a husband payable to his wife and children belong to them and not to the estate of the decedent: *Cutchin v. Johnson*, 120-51. Provision of this section as to wife and children applied in *Hooker v. Sugg*, 102-115; see *Seull v. Ins. Co.*, 132-30. For corporation insuring lives of its officers, see section 1126; *Trust Co. v. Ins. Co.*, 173-558.

NOTE.—Corporation may insure lives of its officers, see Corporations, sec. 1126.

6465. Notice of nonpayment of premium required before forfeiture. No life insurance corporation doing business in this state shall, within one year after the default in payment of any premium, installment, or interest, declare forfeited or lapsed any policy hereafter issued or renewed and not issued upon the payment of monthly or weekly premiums, or unless the same is a term insurance contract for one year or less, nor shall any such policy be forfeited or lapsed by reason of nonpayment, when due, of any premium, interest, or installment or any portion thereof required by the terms of the policy to be paid, within one year from the failure to pay such premium, interest, or installment, unless a written or printed notice stating the amount of such premium, interest, installment, or portion thereof due on such policy, the place where it shall be paid, and the person to whom the same is payable has been duly addressed and mailed, postage paid, to the person whose life is insured or the assignee of the policy, if notice of the

assignment has been given to the corporation, at his or her last known postoffice address in this state, by the corporation or by any officer thereof or person appointed by it to collect such premium, at least fifteen and not more than forty-five days prior to the day when the same is payable. The notice shall also state that unless such premium, interest, installment, or portion thereof then due shall be paid to the corporation or to the duly appointed agent or person authorized to collect such premium, by or before the day it falls due, the policy and all payments thereon will become forfeited and void, except as to the right to a surrender value or paid-up policy, as in the contract provided. If the payment demanded by such notice shall be made within its time limit therefor, it shall be taken to be in full compliance with the requirements of the policy in respect to the time of such payment; and no such policy shall in any case be forfeited or declared forfeited or lapsed until the expiration of thirty days after the mailing of such notice. The affidavit of any officer, clerk, or agent of the corporation, or of any one authorized to mail such notice, that the notice required by this section has been duly addressed and mailed by the corporation issuing such policy, shall be presumptive evidence that such notice has been duly given. No action shall be maintained to recover under a forfeited policy unless the same is instituted within three years from the day upon which default was made in paying the premium, installment, interest, or portion thereof for which it is claimed that forfeiture ensued.

1909, c. 884.

No forfeiture for nonpayment unless proper notice is given: *Aiken v. Ins. Co.*, 173-400. Section referred to in *Owens v. Ins. Co.*, 173-373.

6466. Distribution of surplus in mutual companies. Every life insurance company doing business in this state upon the principle of mutual insurance, or the members of which are entitled to share in the surplus funds thereof, may distribute the surplus annually, or once in two, three, four, or five years, as its directors determine. In determining the amount of the surplus to be distributed there shall be reserved an amount not less than the aggregate net value of all the outstanding policies, this value to be computed by the American experience table of mortality with interest not exceeding four and one-half per cent.

Rev., s. 4776; 1903, c. 536, s. 10.

ART. 22. REGISTERED POLICIES

6467. Deposits to secure registered policies. Any life insurance company, incorporated under the laws of this state, may deposit with the insurance commissioner securities of the kind described in article six of this chapter, for the investment of the capital of insurance companies, or farm loan bonds issued by the federal land banks, or notes or bonds secured by real estate situated in another state approved by the committee hereinafter designated, to any amount not less than ten thousand dollars, which shall be legally transferred by it to him as insurance commissioner and his successors for the common benefit of all the holders of its "registered" policies and annuity bonds issued under the provisions of this article; and these securities shall be held by him and his successors in office in trust for the purposes and objects specified herein.

All securities offered to the insurance commissioner for deposit under this section shall, before acceptance by him, be approved by a committee, composed of the commissioner, the state treasurer, and the attorney-general; and when the securities are of the character prescribed by law and approved by a majority of the committee, the insurance commissioner shall list them in a book of records kept in his department for that purpose. The committee shall endorse on the record, at the end of the list of the securities, its approval of the securities named in the list. The record shall contain a separate list or account of the securities deposited by each insurance company, so kept as to show at all times the total value of all securities on deposit for each company. No security may be withdrawn or substituted except upon the approval of the committee. All the securities, after being approved and listed, shall be deposited with the state treasurer, who shall give his receipt to the insurance commissioner for them. The committee shall, twice a year, in the months of June and December, review and assess the value of all securities on deposit under this section.

Rev., s. 4780; 1905, c. 504, s. 12; 1909, c. 920, ss. 1, 2; 1911, c. 140, s. 1; 1917, c. 191, s. 2.

6468. Additional deposits may be required. Each company which has made deposits herein provided for shall make additional deposits from time to time, as the insurance commissioner prescribes, in amounts of not less than five thousand dollars and of such securities as are described in the preceding section, so that the market value of the securities deposited shall always equal the net value of the registered policies and annuity bonds issued by the company, less such liens not exceeding such value as the company has against it. No company organized under this chapter shall be required to make such deposit until the net value of the policies in force, as ascertained by the insurance commissioner, exceeds the amount deposited by said company under the preceding section. As long as any licensed company maintains its deposit as herein prescribed at an amount equal to or in excess of the net value of its registered policies and annuity bonds, as aforesaid, it is the duty of the insurance commissioner to sign and affix his seal to the certificates, as required in this article, on every policy and annuity bond presented to him for that purpose by any company so depositing.

Rev., s. 4781; 1905, c. 504, s. 15; 1909, c. 920, s. 3; 1911, c. 140, s. 2; 1917, c. 191, s. 3.

6469. Withdrawal of deposits. Any such company whose deposits exceed the net value of all registered policies and annuity bonds it has in force, less such liens not exceeding such value as the company holds against them, may withdraw such excess or it may withdraw any of such securities at any time by depositing in their place others of equal value and of the character authorized by law; and as long as such company remains solvent and keeps up its deposits, as herein required, it may collect the interest and coupons on the securities deposited as they accrue; and any life insurance company may withdraw such securities by and with the consent of the policyholder only; and in case of such withdrawal, the certificate of registration in each case must be surrendered for cancellation, or a receipt from the policyholder, satisfactory to the insurance commissioner, must be produced before such withdrawal of deposits shall be allowed.

Rev., s. 4782; 1905, c. 504, s. 18; 1911, c. 134.

6470. Manner of keeping deposits. The securities deposited under this article shall be deposited and kept in the manner required by law for the keeping of other deposits of insurance companies, but separate from other deposits of the company.

Rev., s. 4783; 1905, c. 504, s. 19.

6471. Record of securities kept by commissioner; deficit made good. The insurance commissioner shall keep a careful record of the securities deposited by each company, and when furnishing the annual certificates of value hereafter required in this article, he may enter thereon the face and market value of the securities deposited by such company. If at any time it appears from such certificate or otherwise that the value of securities held on deposit is less than the net value of the registered policies and annuity bonds issued by such companies, it is not lawful for the insurance commissioner to execute the certificate on any additional policies or annuity bonds of such company until it has made good the deficit. If any company fails or neglects to make good such deposit for sixty days it shall be deemed to be insolvent and shall be proceeded against in the manner provided by law in such cases.

Rev., s. 4784; 1905, c. 504, s. 16.

6472. Registered policies certified. After making the deposits provided for in this article no company may issue a policy of insurance or endowment or an annuity bond known or designated as "registered" unless it has upon its face a certificate in the following words: "This policy or annuity bond is registered and secured by pledge of bonds, stocks, or securities deposited with this department as provided by law," which certificate shall be signed by the insurance commissioner and sealed with the seal of his office. Such policies and bonds shall be known as "registered" policies and annuity bonds, and a sample copy of such kind, class, and issue shall be kept in the office of the insurance commissioner. All policies and bonds of each kind and class issued, and the copies thereof, filed in the office of the insurance commissioner must have imprinted thereon some appropriate designating letter, combination of letters or terms identifying the special forms of contract, together with the year of adoption of such form, and whenever any change or modification is made in the form of contracts, policy, or bond, the designating letters or terms and year of adoption thereon shall be changed accordingly.

Rev., s. 4785; 1905, c. 504, s. 13.

6473. Deposit for, and registration of, unregistered policies. Every company which has made the deposit herein provided for may, at any time after the date on which it was made, deposit with the insurance commissioner securities of the kind herein mentioned and in accordance with the provisions hereof, in an amount, inclusive of any amount deposited under the provisions of this law, equal to the net value of any nonregistered policies and annuity bonds which it has in force at that time, less such liens not exceeding such actual cash value as the company has against them, and the insurance commissioner shall, when requested so to do, furnish such company with a certificate of the description mentioned in the preceding section, to be attached to each of said policies and

annuity bonds. The insurance commissioner shall enter upon each of such certificates the number of the policy or annuity bond to which it belongs and make a record of the same in his department.

Rev., s. 4786; 1905, c. 504, s. 17.

6474. Record to be kept by commissioner; valuation; mutilated policies. The insurance commissioner shall prepare and keep such registers thereof as will enable him to compute their value at any time. Upon sufficient proof, attested by the president or vice-president and secretary of the company which has issued such policies or annuity bonds, that any of them have been commuted or terminated, the insurance commissioner shall commute or cancel them upon such register. The net present value of every policy or annuity bond according to the standard prescribed in the laws of this state for the valuation of policies of life insurance companies when the first premium shall have been paid thereon, less the amount of such liens, not exceeding such value as the company has against it, shall be entered opposite the record of said policy or annuity bond in the register aforesaid at the time the record is made. On the thirty-first day of December of each year or within sixty days thereafter the insurance commissioner shall cause the registered policies and annuity bonds of each company to be carefully revalued, and the net present value thereof at the time fixed for such valuation, less such liens, not exceeding such value as the company has against it, shall be entered upon the register opposite the record of such policy or bond, and the insurance commissioner shall furnish a certificate of the aggregate of such value to the company. For the purpose of making this valuation the insurance commissioner may employ a competent actuary, who shall be paid by the company for which the services are rendered, but nothing herein shall prevent any company from having made such valuation herein contemplated, which may be received by the insurance commissioner upon such proof as he determines. Upon application of an insurance company, subject to the provisions of this article, it is the duty of the insurance commissioner to receive mutilated policies and annuity bonds issued by said companies and certify in lieu thereof other policies or bonds of like tenor and date.

Rev., s. 4787; 1905, c. 504, s. 14.

6475. Power of commissioner in case of insolvency. If at any time the affairs of a life insurance company which has deposited securities under the provisions of this article, in the opinion of the insurance commissioner, appear in such condition as to render the issuing of additional policies and annuity bonds by such company injurious to the public interest, the insurance commissioner may take such proceedings against the company as are authorized by law to be taken against other insolvent companies, and said companies are in all respects subject to the provisions of law affecting other companies.

Rev., s. 4788; 1905, c. 504, s. 20.

6476. Fees for registering policies. Every company making deposits under the provisions of this article must pay to the insurance commissioner for each certificate on registered policies or annuity bonds, including seal, a fee of fifty cents for those exceeding ten thousand dollars in amount and twenty-five cents for all under ten thousand dollars in amount, except policies for one hundred dollars

and not exceeding five hundred dollars the fee shall be fifteen cents; for policies of one hundred dollars or less the fee shall be ten cents; for each certificate, including seal, for nonregistered policies issued in accordance with the provisions of this article, the fee shall be twenty-five cents.

Rev., s. 4789; 1905, c. 504, s. 21.

SUBCHAPTER V. ACCIDENT AND HEALTH INSURANCE

ART. 23. NATURE OF POLICIES

6477. Form, classification, and rates to be approved by insurance commissioner.

No policy of insurance against loss or damage from the sickness or the bodily injury or death of the insured by accident shall be issued or delivered to any person in this state until a copy of the form thereof and of the classification of risks and the premium rates pertaining thereto have been filed with the commissioner of insurance; nor shall it be so issued or delivered until the expiration of thirty days after it has been so filed unless the commissioner shall sooner give his written approval thereto. If the commissioner shall notify, in writing, the company, society, or other insurer which has filed such form that it does not comply with the requirements of law, specifying the reasons for his opinion, it shall be unlawful thereafter for any such insurer to issue any policy in such form. The action of the commissioner in this regard shall be subject to review by any court of competent jurisdiction; but nothing in this article shall be construed to give jurisdiction to any court not already having jurisdiction.

1911, c. 209, s. 1; 1913, c. 91, s. 1.

Payment of premiums is necessary to keep the policy in force, but a deviation may be waived: *Moore v. Accident Assur. Co.*, 173-532. What is an "accident" in case insured is killed in a fight: *Clay v. Ins. Co.*, 174-642. Meaning of "total disability": *Buckner v. Ins. Co.*, 172-762. What is sufficient compliance with requirement as to notice: *Moore v. Accident Assur. Co.*, 173-532; section 6479, subsections 4, 5. Right of subrogation of party paying the loss: *R. R. v. Guarantee Co.*, 175-566.

6478. Specifications as to form of policy. No such policy shall be so issued or delivered (1) unless the entire money and other considerations therefor are expressed in the policy; nor (2) unless the time at which the insurance thereunder takes effect and terminates is stated in a portion of the policy preceding its execution by the insurer; nor (3) if the policy purports to insure more than one person; nor (4) unless every printed portion thereof and of any endorsements or attached papers shall be plainly printed in type of which the face shall be not smaller than ten point; nor (5) unless a brief description thereof be printed on its first page, and on its filing back in type of which the face shall not be smaller than fourteen point; nor (6) unless the exceptions of the policy be printed with the same prominence as the benefits to which they apply: Provided, however, that any portion of such policy which purports, by reason of the circumstances under which a loss is incurred, to reduce any indemnity promised therein to an amount less than that provided for the same loss occurring under ordinary circumstances under which a loss is incurred, to reduce any indemnity promised therein to an amount less than that provided for the same loss occurring under ordinary circumstances, shall be printed in bold-face type and with greater prominence than any other portion of the text of the policy.

1913, c. 91, s. 2.

6479. Standard provisions in policy. Every such policy so issued shall contain certain standard provisions, which shall be in the words and in the order herein-after set forth and be preceded in every policy by the caption "Standard Provisions." In each standard provision, wherever the word "insurer" is used, there shall be substituted therefor "company" or "corporation" or "association" or "society" or such other word as will properly designate the insurer.

1. *Provisions relative to contract.* A standard provision relative to the contract may be in either of the following two forms: Form (A) to be used in policies which do not provide for reduction of indemnity on account of change of occupation, and Form (B) to be used in policies which do so provide. If Form (B) is used and the policy provides indemnity against loss from sickness, the words "or contracts sickness" may be inserted therein immediately after the words "in the event that the insured is injured."

(A) This policy includes the endorsements and attached papers, if any, and contains the entire contract of insurance. No reduction shall be made in any indemnity herein provided by reason of change in the occupation of the insured or by reason of his doing any act or thing pertaining to any other occupation.

(B) This policy includes the endorsements and attached papers, if any, and contains the entire contract of insurance except as it may be modified by the insurer's classification of risks and premium rates in the event that the insured is injured after having changed his occupation to one classified by the insurer as more hazardous than that stated in the policy, or while he is doing any act or thing pertaining to any occupation so classified, except ordinary duties about his residence or while engaged in recreation, in which event the insurer will pay only such portion of the indemnities provided in the policy as the premium paid would have purchased at the rate but within the limits so fixed by the insurer for such more hazardous occupation.

If the law of the state in which the insured resides at the time this policy is issued requires that prior to its issue a statement of the premium rates and classification of risks pertaining to it shall be filed with the state official having supervision of insurance in such state, then the premium rates and classification of risks mentioned in this policy shall mean only such as have been last filed by the insurer in accordance with such law; but if such filing is not required by such law then they shall mean the insurer's premium rates and classification of risks last made effective by it in such state prior to the occurrence of the loss for which the insurer is liable.

2. *Changes in the contract.* A standard provision relative to changes in the contract shall be in the following form: No statement made by the applicant for insurance not included herein shall avoid the policy or be used in any legal proceeding hereunder. No agent has authority to change this policy or to waive any of its provisions. No change in this policy shall be valid unless approved by an executive officer of the insurer and such approval be endorsed hereon.

3. *Reinstatement of policy.* A standard provision relative to reinstatement of policy after lapse may be in either of the three following forms: Form (A) to be used in policies which insure only against loss from accident; Form (B) to be used in policies which insure only against loss from sickness; and Form (C) to be used in policies which insure against loss from both accident and sickness.

(A) If default be made in the payment of the agreed premium for this policy,

the subsequent acceptance of a premium by the insurer or by any of its duly authorized agents shall reinstate the policy, but only to cover loss resulting from accidental injury thereafter sustained.

(B) If default be made in the payment of the agreed premium for this policy, the subsequent acceptance of a premium by the insurer or by any of its duly authorized agents shall reinstate the policy, but only to cover such sickness as may begin more than ten days after the date of such acceptance.

(C) If default be made in the payment of the agreed premium for this policy, the subsequent acceptance of a premium by the insurer or by any of its duly authorized agents shall reinstate the policy, but only to cover accidental injury thereafter sustained and such sickness as may begin more than ten days after the date of such acceptance.

4. *Time of notice of claim.* A standard provision relative to time of notice of claim may be in either of the three following forms: Form (A) to be used in policies which insure only against loss from accident; Form (B) to be used in policies which insure only against loss from sickness, and Form (C) to be used in policies which insure against loss from both accident and sickness. If Form (A) or Form (C) is used the insurer may at its option add thereto the following sentence: "In event of accidental death immediate notice thereof must be given to the insurer."

(A) Written notice of injury on which claim may be based must be given to the insurer within twenty days after the date of the accident causing such injury.

(B) Written notice of sickness on which claim may be based must be given to the insurer within ten days after the commencement of the disability from such sickness.

(C) Written notice of injury or of sickness on which claim may be based must be given to the insurer within twenty days after the date of the accident causing such injury or within ten days after the commencement of disability from such sickness.

5. *Sufficient notice of claim.* A standard provision relative to sufficiency of notice of claim shall be in the following form, and the insurer shall insert in the blank space such office and its location as it may desire to designate for the purpose of notice:

Such notice given by or in behalf of the insured or beneficiary, as the case may be, to the insurer at or to any authorized agent of the insurer, with particulars sufficient to identify the insured, shall be deemed notice to the insurer. Failure to give notice within the time provided in this policy shall not invalidate any claim, if it shall be shown not to have been reasonably possible to give such notice and that notice was given as soon as was reasonably possible.

6. *Furnishing forms for proof of loss.* A standard provision relative to furnishing forms for the convenience of the insured in submitting proof of loss shall be as follows:

The insurer, upon receipt of such notice, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not so furnished within fifteen days after the receipt of such notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting within the time fixed in the policy for filing proofs of

loss, written proof covering the occurrence, character, and extent of the loss for which claim is made.

7. *Filing proof of loss.* A standard provision relative to filing proof of loss which shall be in such one of the following forms as may be appropriate to the indemnities provided:

(A) Affirmative proof of loss must be furnished to the insurer at its said office within ninety days after the date of the loss for which claim is made.

(B) Affirmative proof of loss must be furnished to the insurer at its said office within ninety days after the termination of the period of disability for which the company is liable.

(C) Affirmative proof of loss must be furnished to the insurer at its said office in case of claim for loss of time from disability within ninety days after the termination of the period for which the insurer is liable, and in case of claim for any other loss within ninety days after the date of such loss.

8. *Examination of person and autopsy.* A standard provision relative to examination of the person of the insured and relative to autopsy shall be in the following form: The insurer shall have the right and opportunity to examine the person of the insured when and so often as it may reasonably require during the pendency of claim hereunder, and also the right and opportunity to make an autopsy in case of death where it is not forbidden by law.

9. *Time of payments.* A standard provision relative to the time within which payments other than those for loss of time on account of disability shall be made may be in either of the following two forms, and which may be omitted from any policy providing only indemnity for loss of time on account of disability. The insurer shall insert in the blank space either the word “immediately” or appropriate language to designate such period of time, not more than sixty days, as it may desire: Form (A) to be used in policies which do not provide indemnity for loss of time on account of disability, and Form (B) to be used in policies which do so provide.

(A) All indemnities provided in this policy will be paid after receipt of due proof.

(B) All indemnities provided in this policy for loss other than that of time on account of disability will be paid after receipt of due proof.

10. *Periodical payments.* A standard provision relative to periodical payments of indemnity for loss of time on account of disability shall be in the following form, and may be omitted from any policy not providing for such indemnity. The insurer shall insert in the first blank space of the form appropriate language to designate the proportion of accrued indemnity it may desire to pay, which proportion may be all or any part not less than one-half, and in the second blank space shall insert any period of time not exceeding sixty days:

Upon request of the insured and subject to due proof of loss accrued indemnity for loss of time on account of disability will be paid at the expiration of each during the continuance of the period for which the insurer is liable, and any balance remaining unpaid at the termination of such period will be paid immediately upon receipt of due proof.

11. *Indemnity payments.* A standard provision relative to indemnity payments may be in either of the two following forms: Form (A) to be used in policies which designate a beneficiary, and Form (B) to be used in policies which do not designate any beneficiary other than the insured:

(A) Indemnity for loss of life of the insured is payable to the beneficiary, if surviving the insured, and otherwise to the estate of the insured. All other indemnities of this policy are payable to the insured.

(B) All the indemnities of this policy are payable to the insured.

12. *Cancellation of policy by insured.* A standard provision providing for cancellation of the policy at the instance of the insured shall be in the following form: If the insured shall at any time change his occupation to one classified by the insurer as less hazardous than that stated in the policy, the insurer, upon written request of the insured, and surrender of the policy, will cancel the same and return to the insured the unearned premium.

13. *Rights of beneficiary.* A standard provision relative to the rights of the beneficiary under the policy shall be in the following form and may be omitted from any policy not designating a beneficiary: Consent of the beneficiary shall not be requisite to surrender or assignment of this policy, or to change of beneficiary, or to any other changes in the policy.

14. *Limiting time of action.* A standard provision limiting the time within which suit may be brought upon the policy shall be as follows: No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after proof of loss has been filed in accordance with the requirements of this policy, nor shall such action be brought at all unless brought within two years from the expiration of the time within which proof of loss is required by the policy.

15. *Time limitations.* A standard provision relative to time limitations of the policy shall be as follows: If any time limitation of this policy with respect to giving notice of claim or furnishing proof of loss is less than that permitted by the law of the state in which the insured resides at the time this policy is issued, such limitation is hereby extended to agree with the minimum period permitted by such law.

1911, c. 209, s. 1; 1913, c. 91, s. 3.

6480. Certain provisions forbidden in policy. No such policy shall be issued or delivered which contains any provision (1) relative to cancellation at the instance of the insurer; or (2) limiting the amount of indemnity to a sum less than the amount stated in the policy and for which the premium has been paid; or, (3) providing for the deduction of any premium from the amount paid in settlement of claim; or, (4) relative to other insurance by the same insurer; or, (5) relative to the age limits of the policy; unless such provisions, which are hereby designated as optional standard provisions, shall be in the words and in the order in which they are set forth in the next section, but the insurer may at its option omit from the policy any such optional standard provisions. Such optional standard provisions if inserted in the policy shall immediately succeed the standard provisions named in this article.

1911, c. 209, s. 2; 1913, c. 91, s. 4.

6481. Optional standard provisions. The optional standard provisions which may be used in the policy are as follows:

1. *Cancellation of policy by insurer.* The insurer may cancel this policy at any time by written notice delivered to the insured or mailed to his last address as shown by the records of the insurer, together with cash or the insurer's check for the unearned portion of the premiums actually paid by the insured, and such cancellation shall be without prejudice to any claim originating prior thereto.

2. *Reduction of indemnity.* If the insured shall carry with another company, corporation, association, or society other insurance covering the same loss without giving written notice to the insurer, then in that case the insurer shall be liable only for such portion of the indemnity promised as the said indemnity bears to the total amount of like indemnity in all policies covering such loss, and for the return of such part of the premiums paid as shall exceed the pro rata for the indemnity thus determined.

3. *Deduction of premium.* Upon the payment of claim hereunder any premium then due and unpaid or covered by any note or written order may be deducted therefrom.

4. *Other insurance.* An optional standard provision relative to other insurance by the same insurer which shall be in such one of the following forms as may be appropriate to the indemnities provided, and in the blank spaces of which the insurer shall insert such upward limits of indemnity as are specified by the insurer's classification of risks, filed as required by this article:

(A) If a like policy or policies, previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity in excess of \$....., the excess insurance shall be void, and all premiums paid for such excess shall be returned to the insured.

(B) If a like policy or policies, previously issued by the insurer to the insured, be in force concurrently herewith, making the aggregate indemnity for loss of time on account of disability in excess of \$..... weekly, the excess insurance shall be void, and all premiums paid for such excess shall be returned to the insured.

(C) If a like policy or policies, previously issued by the insurer to the insured, be in force concurrently herewith, making the aggregate indemnity for loss other than that of time on account of disability in excess of \$....., or the aggregate indemnity for loss of time on account of disability in excess of \$..... weekly, the excess insurance of either kind shall be void, and all premiums paid for such excess shall be returned to the insured.

5. *Age limits.* An optional standard provision relative to the age limits of the policy, which shall be in the following form and in the blank spaces of which the insurer shall insert such number of years as it may elect: The insurance under this policy shall not cover any person under the age of years nor over the age of years. Any premium paid to the insurer for any period not covered by this policy will be returned upon request.

1911, c. 209, s. 2; 1913, c. 91, s. 4.

6482. Conflicting provisions forbidden; terms in policy. No such policy shall be issued or delivered if it contains any provision contradictory, in whole or part, of any provisions hereinbefore in this article designated as "Standard

Provisions” or as “Optional Standard Provisions”; nor shall any endorsements or attached papers vary, alter, extend, be used as a substitute for, or in any way conflict with any of the “Standard Provisions” or the “Optional Standard Provisions”; nor shall such policy be issued or delivered if it contains any provision purporting to make any portion of the charter, constitution, or by-laws of the insurer a part of the policy unless such portion of the charter, constitution, or by-laws shall be set forth in full in the policy, but this prohibition shall not be deemed to apply to any statement of rates or classification of risks filed with the commissioner of insurance in accordance with the provisions of this article.

1911, c. 209, s. 3; 1913, c. 91, s. 5.

ART. 24. GENERAL REGULATIONS

6483. False statement in application. The falsity of any statement in the application for any policy covered by this subchapter shall not bar the right to recovery thereunder unless such false statement was made with actual intent to deceive or unless it materially affected either the acceptance of the risk or the hazard assumed by the insurer.

1913, c. 91, s. 6.

6484. Waiver by insurer. The acknowledgment by any insurer of the receipt of notice given under any policy covered by this subchapter, or the furnishing of forms for filing proofs of loss, or the acceptance of such proofs, or the investigation of any claim thereunder, shall not operate as a waiver of any of the rights of the insurer in defense of any claim arising under such policy.

1913, c. 91, s. 7.

6485. Alteration of application. No alteration of any written application for insurance by erasure, insertion, or otherwise, shall be made by any person other than the applicant without his written consent, and the making of any such alteration without the consent of the applicant shall be a misdemeanor. If such alteration shall be made by any officer of the insurer, or by any employee of the insurer, with the insurer's knowledge or consent, then such act shall be deemed to have been performed by the insurer thereafter issuing the policy upon such altered application.

1913, c. 91, s. 8.

6486. Construction of policy. A policy issued in violation of this subchapter shall be held valid, but shall be construed as provided in this subchapter, and when any provision in such a policy is in conflict with any provision of this subchapter, the rights, duties, and obligations of the insurer, the policyholder, and the beneficiary shall be governed by the provisions of this subchapter.

1913, c. 91, s. 9.

6487. Provisions of laws of other states. The policies of insurance against accidental bodily injury or sickness issued by an insurer not organized under the laws of this state may contain, when issued in this state, any provision which the law of the state, territory, or district of the United States under which the insurer is organized, prescribed for insertion in such policies; and the policies of insurance against accidental bodily injury or sickness issued by an insurer organized under the laws of this state may contain, when issued or delivered

in any other state, territory, district, or country, any provision required by the laws of the state, territory, district, or country in which the same are issued, anything in this subchapter to the contrary notwithstanding.

1911, c. 209, s. 4; 1913, c. 91, s. 10.

6488. Discrimination forbidden. Discrimination between individuals of the same class in the amount of premiums or rates charged for any policy of insurance covered by this subchapter, or in the benefits payable thereon, or in any of the terms or conditions of such policy, or in any other manner whatsoever, is prohibited.

1913, c. 91, s. 11.

6489. Certain policies of insurance not affected. 1. Nothing in this subchapter shall apply to or affect any policy of liability or workmen's compensation insurance or any general or blanket policy of insurance issued to any municipal corporation or department thereof, or to any corporation, copartnership, association, or individual employer, police or fire department, underwriters' corps, salvage bureau, or like associations or organizations, where the officers, members, or employees or classes or departments thereof are insured for their individual benefit against specified accidental bodily injuries or sickness while exposed to the hazards of the occupation or otherwise, in consideration of a premium intended to cover the risks of all the persons insured under such policy.

2. Nothing in this subchapter shall apply to or in any way affect contracts supplemental to contracts of life or endowment insurance where such supplemental contracts contain no provisions except such as operate to safeguard such insurance against lapse or to provide a special surrender value therefor in the event that the insured shall be totally and permanently disabled by reason of accidental bodily injury or by sickness: Provided, that no such supplemental contract shall be issued or delivered to any person in this state unless and until a copy of the form thereof has been submitted to and approved by the commissioner of insurance, under such reasonable rules and regulations as he shall make concerning the provisions in such contracts and their submission to and approval by him.

3. Nothing in this subchapter shall apply to or in any way affect fraternal benefit societies.

4. The provisions of this subchapter contained in clause (5) of section 6478, and clauses two, three, eight, and twelve of section 6479, may be omitted from railroad ticket policies sold only at railroad stations or at railroad ticket offices by railroad employees.

1911, c. 209, s. 5; 1913, c. 91, s. 12.

6490. Punishment for violation. Any company, association, society, or other insurer or any officer or agent thereof, which or who issues or delivers to any person in this state any policy in wilful violation of the provisions of this subchapter, shall be punished by a fine of not more than five hundred dollars for each offense, and the commissioner of insurance may revoke the license of any company, corporation, association, society, or other insurer of another state or country, or of the agent thereof, which or who wilfully violates any provision of this subchapter.

1911, c. 209, s. 6; 1913, c. 91, s. 13.

SUBCHAPTER VI. FRATERNAL ORDERS AND SOCIETIES

ART. 25. FRATERNAL ORDERS

6491. General insurance law not applicable. Nothing in the general insurance laws, except such as apply to fraternal orders or fraternal societies, shall be construed to extend to benevolent associations, incorporated under the laws of this state that only levy an assessment on the members to create a fund to pay the family of a deceased member and make no profit therefrom, and do not solicit business through agents. Such benevolent associations providing death benefits in excess of three hundred dollars to any one person, or disability benefits not exceeding three hundred dollars in any one year to any one person, or both, shall be known as “fraternal benefit societies”; and those providing benefits of three hundred dollars or less shall be known as “fraternal orders.”

Rev., s. 4794; 1899, c. 54, s. 87; 1901, c. 706, s. 2; 1913, c. 46.

For other provisions as to assessment insurance, see sections 6356-6362.

The act of 1899, c. 54, was intended to exempt fraternal orders and societies from the operation of the general insurance laws and place them in a separate class: *Hollingsworth v. Supreme Council*, 175-615. See annotations under section 6509.

6492. Fraternal orders defined. Every incorporated association, order, or society doing business in this state on the lodge system, with ritualistic form of work and representative form of government, for the purpose of making provision for the payment of benefits of three hundred dollars or less in case of death, sickness, temporary or permanent physical disability, either as the result of disease, accident, or old age, formed and organized for the sole benefit of its members and their beneficiaries, and not for profit, is hereby declared to be a “fraternal order.” Societies and orders which do not make insurance contracts or collect dues or assessments therefor, but simply pay burial or other benefits out of the treasury of their orders, and use their funds for the purpose of building homes or asylums for the purpose of caring for and educating orphan children and aged and infirm people in this state, shall not be considered as “fraternal orders” or “fraternal benefit societies” under this subchapter; and such order or association paying death or disability benefits may also create, maintain, apply, or disburse among its membership a reserve or emergency fund as may be provided in its constitution or by-laws; but no profit or gain may be added to the payments made by a member.

Rev., s. 4795; 1899, c. 54, s. 88; 1901, c. 706, s. 3; 1907, c. 936; 1913, c. 46.

Section referred to in *Brenizer v. Royal Arcanum*, 141-418; *Hollingsworth v. Supreme Council*, 175-615. See annotations under section 6509.

6493. Funds derived from assessments and dues. The fund from which the payment of benefits, as provided for in the next preceding section, shall be made, and the fund from which the expenses of such association, order, or society shall be defrayed, shall be derived from assessments or dues collected from its members. Such societies or associations shall be governed by the laws of the state governing fraternal orders or societies, and are exempt from the provisions of all general insurance laws of this state, and no law hereafter passed shall apply to such societies unless fraternal orders or societies are designated therein.

Rev., s. 4796; 1899, c. 54, s. 89; 1901, c. 706, s. 2; 1913, c. 46.

Funds derived from assessments, which a collector is bound to pay over to society's treasurer, are impressed with a trust and are not subject to attachment in a suit against the society by a creditor: *Brenizer v. Royal Arcanum*, 141-409; see *Blackwell v. Life Assn.*, 141-117.

Assessments due are not debts or choses in action which company could enforce: *Blackwell v. Life Assn.*, 141-117—and a receiver of a foreign insurance company will not be appointed where assessments to become due are the only assets, *Ibid.*

What law governs in regard to assessments when association is chartered in another state: *Hollingsworth v. Supreme Council*, 175-615.

6494. Meetings of governing body; principal office; separation of races. Any such society or order incorporated and organized under the laws of this state may provide for the meeting of its supreme legislative or governing body in any other state, province, or territory wherein such society has subordinate lodges, and all business transacted at such meetings is as valid in all respects as if the meetings were held in this state; but the principal business office of such society shall always be kept in this state. No fraternal order or society or beneficiary association shall be authorized to do business in this state under the provisions of this article, whether incorporated under the laws of this or any other state, province, or territory, which associates with, or seeks in this state to associate with, as members of the same lodge, fraternity, society, association, the white and colored races with the objects and purposes provided in this article.

Rev., s. 4797; 1899, c. 54, s. 91; 1913, c. 46.

6495. Conditions precedent to doing business. Any such fraternal, beneficiary order, society, or association as defined by this chapter, chartered and organized in this state or organized and doing business under the laws of any other state, district, province, or territory, having the qualifications required of domestic societies of like character, upon satisfying the insurance commissioner that its business is proper and legitimate and so conducted, may be admitted to transact business in this state upon the same conditions as are prescribed by this chapter for admitting and authorizing foreign insurance companies to do business in this state, except that such fraternal orders shall not be required to have the capital required of such insurance companies.

Rev., s. 4798; 1899, c. 54, s. 92; 1901, c. 706, s. 2; 1903, c. 438, s. 9; 1913, c. 46.

Subject to regulation of insurance commissioner as to agents, license, etc.: *State v. Arlington*, 157-640. Courts of this state have no power to control by mandamus or injunction the supreme council of a foreign fraternal insurance society: *Brenizer v. Royal Arcanum*, 141-409; *Blackwell v. Life Assn.*, 141-117.

6496. Certain lodge systems exempt. Beneficial fraternal orders, or societies incorporated under the laws of this state which are conducted under the lodge system, having the supreme lodge or governing body located in this state, and so organized that the membership consists of members of subordinate lodges, and the subordinate lodges accept for membership none but residents of the county in which such subordinate lodge is located, and each subordinate lodge issues certificates, makes assessments, and collects a fund to pay benefits to the widows and orphans of its own deceased members and their families, each lodge, independently of the other, for itself, and independently of the supreme lodge, each lodge controlling the fund for this purpose, and in addition to the benefits paid by each subordinate lodge to its own members, the supreme lodge provides

for an additional benefit for such of the members of the subordinate lodges as are qualified, at the option of the subordinate lodge member, and such organization is not conducted for profit, has no capital stock, and has been in operation for ten years in this state, such beneficial orders or societies shall be exempt from the requirements of this chapter, and shall not be required to pay any license tax or fees nor make any report to the insurance commissioner, unless the assessments collected for death benefits by the supreme lodge amount to at least three hundred dollars in one year. The insurance commissioner may require the chief or presiding officer, or the secretary, to file annually an affidavit that such organization is entitled to this exemption.

1911, c. 199.

ART. 26. FRATERNAL BENEFIT SOCIETIES

6497. Fraternal benefit society defined. Any corporation, society, order, or voluntary association, without capital stock, organized and carried on solely for the mutual benefit of its members and their beneficiaries, and not for profit, and having a lodge system with ritualistic form of work and representative form of government, and which makes provision for the payment of benefits as hereafter prescribed in this article, is declared to be a fraternal benefit society.

1913, c. 89, s. 1.

6498. Lodge system defined. A society having a supreme governing or legislative body and subordinate lodges or branches, by whatever name known, into which members are elected, initiated, and admitted in accordance with its constitution, laws, rules, regulations, and prescribed ritualistic ceremonies, which subordinate lodges or branches are required by the laws of such society to hold regular or stated meetings at least once in each month, is deemed to be operating on the lodge system.

1913, c. 89, s. 2.

6499. Representative form of government defined. A society is deemed to have a representative form of government when it provides in its constitution and laws for a supreme legislative or governing body, composed of representatives elected either by the members or by delegates elected directly or indirectly by the members, together with such other members as may be prescribed by its constitution and laws: Provided, that the elective members constitute a majority in number and have not less than two-thirds of the votes, nor less than the votes required to amend its constitution and laws; and Provided further, that the meetings of the supreme or governing body, and the election of officers, representatives, or delegates, are held as often as once in four years. The members, officers, representatives, or delegates of a fraternal benefit society shall not vote by proxy.

1913, c. 89, s. 3.

6500. Organization. 1. *Application.* Ten or more persons, citizens of the United States, and a majority of whom are citizens of this state, who desire to form a fraternal benefit society, as defined by this article, may make and sign (giving their addresses) and acknowledge before some officer competent to take acknowledgment of deeds, articles of incorporation in which shall be stated:

a. The proposed corporate name of the society, which shall not so closely resemble the name of any society or insurance company already transacting business in this state as to mislead the public or lead to confusion.

b. The purpose for which it is formed—which shall not include more liberal powers than are granted by this article: Provided, that any lawful social, intellectual, educational, charitable, benevolent, moral, or religious advantages may be set forth among the purposes of the society—and the mode in which its corporate powers are to be exercised.

c. The names, residences, and official titles of all the officers, trustees, directors, or other persons who are to have and exercise the general control and management of the affairs and funds of the society for the first year or until the ensuing election at which all such officers shall be elected by the supreme legislative or governing body, which election shall be held not later than one year from the date of the issuance of the permanent certificate.

2. *Papers and bond filed.* Such articles of incorporation and duly certified copies of the constitution and laws, rules and regulations, and copies of all proposed forms of benefit certificates, applications therefor, and circulars to be issued by such society, and a bond in the sum of five thousand dollars, with sureties approved by the insurance commissioner, conditioned upon the return of the advance payments, as provided in this section, to applicants, if the organization is not completed within one year, shall be filed with the insurance commissioner, who may require such further information as he deems necessary.

3. *Preliminary license.* If the purposes of the society conform to the requirements of this article, and all provisions of law have been complied with, the insurance commissioner shall so certify to the secretary of state, and upon his issuing the articles of incorporation shall furnish the incorporators a preliminary license authorizing the society to solicit members as hereinafter provided.

4. *Completion of organization.* Upon receipt of such license from the insurance commissioner the society may solicit members for the purpose of completing its organization, and shall collect from each applicant the amount of not less than one regular monthly payment, in accordance with its table of rates as provided by its constitution and laws, and shall issue to each applicant a receipt for the amount so collected. But no such society shall incur any liability other than for such advanced payments, nor issue any benefit certificate nor pay or allow, or offer or promise to pay or allow, to any person any death or disability benefit until actual bona fide applications for death benefit certificates have been secured upon at least five hundred lives for at least one thousand dollars each, or the largest amount written on any one person, and all such applicants for death benefits shall have been regularly examined by legally qualified practicing physicians, and certificates of such examinations have been duly filed and approved by the chief medical examiner of such society; nor until there shall be established ten subordinate lodges or branches into which said five hundred applicants have been initiated; nor until there has been submitted to the insurance commissioner under oath of the president and secretary, or corresponding officers of such society, a list of such applicants, giving their names, addresses, date examined, date approved, date initiated, name and number of the subordinate branch of which each applicant is a member, amount of benefits to be granted, rate of stated periodical contributions, which shall be sufficient to provide for meeting the

mortuary obligation contracted, when valued for death benefits upon the basis of the national fraternal congress table of mortality, as adopted by the national fraternal congress, August twenty-third, one thousand eight hundred and ninety-nine, or any higher standard, at the option of the society, and for disability benefits by tables based upon reliable experience, and for combined death and permanent total disability benefits by tables based upon reliable experience, with an interest assumption not higher than four per cent per annum; nor until it shall be shown to the insurance commissioner by the sworn statement of the treasurer, or corresponding officer of such society, that at least five hundred applicants have each paid in cash at least one regular monthly payment as herein provided per one thousand dollars of indemnity to be effected, which payments in the aggregate shall amount to at least twenty-five hundred dollars. Such advanced payments shall be credited to the mortuary or disability fund on account of such applicants, and no part thereof may be used for expenses, but such payments shall be held in trust and returned to the applicants if the organization is not completed within one year as hereinafter provided.

5. *License issued.* The insurance commissioner may make such examination and require such further information as he deems advisable, and, upon presentation of satisfactory evidence that the society has complied with all the provisions of law, he shall issue to such society a certificate or license to that effect. Such certificate shall be prima facie evidence of the existence of such society at the date of such certificate.

6. *One-year limit.* No preliminary certificate or license granted under the provisions of this section shall be valid after one year from its date, or after such further period, not exceeding one year, as may be authorized by the insurance commissioner, upon cause shown, unless the five hundred applicants herein required have been secured and the organization has been completed as herein provided; and the articles of incorporation and all proceedings thereunder shall become null and void in one year from the date of such preliminary certificate, or at the expiration of such extended period, unless the society shall have completed its organization and commenced business as herein provided.

7. *Discontinuance.* When any domestic society shall have discontinued business for the period of one year, or has less than four hundred members, its charter shall become null and void.

1913, c. 89, s. 11.

6501. Constitution and by-laws. Each society shall have power to make a constitution and by-laws for the government of the society, the admission of its members, the management of its affairs, and the fixing and readjusting of the rates of contribution of its members from time to time; it shall have the power to change or amend such constitution and by-laws, and it shall have such other powers as are necessary and incidental to carrying into effect the objects and purposes of the society.

1913, c. 89, s. 11.

6502. Amendments to constitution and by-laws. Every society transacting business under this article shall file with the insurance commissioner a duly certified copy of all amendments of or additions to its constitution and laws within ninety days after the enactment of the same. Printed copies of the constitution

and laws as amended, changed or added to, certified by the secretary or corresponding officer of the society, shall be prima facie evidence of the legal adoption thereof.

1913, c. 89, s. 19.

6503. Waiver of the provisions of the laws. The constitution and laws of the society may provide that no subordinate body, nor any of its subordinate officers or members, shall have the power or authority to waive any of the provisions of the laws and constitution of the society, and the same shall be binding on the society and each and every member thereof, and on all beneficiaries of members.

1913, c. 89, s. 17.

6504. Place of meeting; location of office. Any domestic society may provide that the meetings of its legislative or governing body may be held in any state, district, province, or territory wherein such society has subordinate branches, and all business transacted at such meetings shall be as valid in all respects as if such meetings were held in this state; but its principal office shall be located in this state.

1913, c. 89, s. 15.

6505. No personal liability for benefits. Officers and members of the supreme, grand, or any subordinate body of any such incorporated society shall not be individually liable for the payment of any disability or death benefit provided for in the laws and agreements of such society; but the same shall be payable only out of the funds of such society and in the manner provided by its laws.

1913, c. 89, s. 16.

6506. Qualifications for membership. Any society may admit to beneficial membership any person not less than sixteen and not more than sixty years of age, who has been examined by a legally qualified physician, and whose examination has been supervised and approved in accordance with the laws of the society: Provided, that any beneficiary member of such society who shall apply for a certificate providing for disability benefits need not be required to pass an additional medical examination therefor. Nothing herein contained shall prevent such society from accepting general or social members.

1913, c. 89, s. 6.

6507. Benefits. 1. Every society transacting business under this article shall provide for the payment of death benefits, and may provide for the payment of benefits in case of temporary or permanent physical disability, either as the result of disease, accident, or old age: Provided, the period of life at which the payment of benefits for disability on account of old age shall commence shall not be under seventy years, and may provide for monuments or tombstones to the memory of its deceased members, and for the payment of funeral benefits. Such society shall have the power to give a member, when permanently disabled or on attaining the age of seventy, all or such portion of the face value of his certificate as the laws of the society may provide; but nothing contained in this article shall be so construed as to prevent the issuing of benefit certificates for a term of years less than the whole of life, which are payable upon the death or

disability of the member occurring within the term for which the benefit certificate may be issued. Such society shall, upon written application of the member, have the power to accept a part of the periodical contributions in cash, and charge the remainder, not exceeding one-half of the periodical contribution, against the certificate, with interest payable or compounded annually at a rate not lower than four per cent per annum; but this privilege shall not be granted except to societies which have readjusted or may hereafter readjust their rates of contributions, and to contracts affected by such readjustment.

2. Any society which shall show by the annual valuation hereinafter provided for that it is accumulating and maintaining the reserve not lower than the usual reserve computed by the American experience table and four per cent interest, may grant to its members extended and paid-up protection, or such withdrawal equities as its constitution and laws may provide; but such grants shall in no case exceed in value the portion of the reserve to the credit of such members to whom they are made.

1913, c. 89, s. 4.

6508. Beneficiaries. The payment of death benefits shall be confined to wife, husband, relative by blood to the fourth degree, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather, stepmother, step-children, children by legal adoption, or to a person or persons dependent upon the member; but if after the issuance of the original certificate the member shall become dependent upon an incorporated charitable institution, he shall have the privilege, with the consent of the society, to make such institution his beneficiary. Within the above restrictions each member shall have the right to designate his beneficiary, and, from time to time, have the same changed in accordance with the laws, rules or regulations of the society, and no beneficiary shall have or obtain any vested interest in such benefit until the same has become due and payable upon the death of the member. Any society may, by its laws, limit the scope of beneficiaries within the above classes.

1913, c. 89, s. 5.

A member may change the beneficiary at will unless restricted by law or the rule of the order or society: *Pollock v. Household of Ruth*, 150-211.

The bigamous wife of a member is not entitled to benefits under a certificate payable to the wife: *Applebaum v. Commercial Travelers*, 171-435.

6509. Benefit certificates. Every certificate issued by any such society shall specify the amount of benefit provided thereby, and shall provide that the certificate, the charter, or articles of incorporation or, if a voluntary association, the articles of association, the constitution and laws of the society, and the application for membership and medical examination, signed by the applicant, and all amendments to each thereof, shall constitute the agreement between the society and the member; and copies of the same certified by the secretary of the society, or corresponding officer, shall be received in evidence of the terms and conditions thereof. Any changes, additions, or amendments to the charter or articles of incorporation, or articles of association if a voluntary association, constitution or laws duly made or enacted subsequent to the issuance of the benefit certificate, shall bind the member and his beneficiaries, and shall govern and control the

agreement in all respects the same as though such changes, additions, or amendments had been made prior to and were in force at the time of the application for membership.

1913, c. 89, s. 7.

A change of classification and rates which discriminates against certain members is invalid, and the members so discriminated against may recover the amount paid by them: *Williams v. Heptasophs*, 172-787; *Wilson v. Heptasophs*, 174-628; *Makely v. Legion of Honor*, 133-367; *Hill v. Life Assn.*, 128-463; *Strauss v. Life Assn.*, 126-971; s. c., 128-465.

The power to increase rates is recognized in *Hollingsworth v. Supreme Council*, 175-615, which distinguishes the cases above cited, decided under the law before the act of 1899, c. 54; see section 6491.

The member is concluded by the agreement to leave the adjustment of his right to benefits to the regulations of the organization, in the absence of fraud: *Nelson v. R. R.*, 157-194; s. c., 167-185 (Relief Department).

Suspension of member for nonpayment of dues: *Coile v. Commercial Travelers*, 161-104. Waiver where insured misrepresents his age: *Robinson v. B. of L. F. and E.*, 170-545. The burden is upon the society to show matter in avoidance of the policy: *Lyons v. Knights of Pythias*, 172-408; *Harris v. Junior Order*, 168-357.

6510. Benefits not subject to debts. No money or other benefit, charity or relief or aid to be paid, provided, or rendered by any such society shall be liable to attachment, garnishment, or other process, or be seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay any debt or liability of a member or beneficiary or any other person who may have a right thereunder, either before or after payment.

1913, c. 89, s. 18.

6511. Funds provided. 1. Any society may create, maintain, invest, disburse, and apply an emergency, surplus, or other similar fund in accordance with its laws. Unless otherwise provided in the contract, such funds shall be held, invested and disbursed for the use and benefit of the society, and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment or the surrender of any part thereof, except as provided in subsection two of section 6507. The funds from which benefits shall be paid and the funds from which the expenses of the society shall be defrayed shall be derived from periodical or other payments by the members of the society and accretions of said funds. But no society, domestic or foreign, shall hereafter be incorporated or admitted to transact business in this state which does not provide for stated periodical contributions sufficient to provide for meeting the mortuary obligations contracted, when valued upon the basis of the national fraternal congress table of mortality as adopted by the national fraternal congress, August twenty-third, one thousand eight hundred and ninety-nine, or any higher standard, with interest assumption not more than four per cent per annum, nor write or accept members for temporary or permanent disability benefits except upon tables based upon reliable experience, with an interest assumption not higher than four per cent per annum.

2. Deferred payments or installments of claims shall be considered as fixed liabilities on the happening of the contingency upon which such payments or installments are thereafter to be paid. Such liability shall be the present value of such future payments or installments upon the rate of interest and mortality

assumed by the society for valuation, and every society shall maintain a fund sufficient to meet such liability regardless of proposed future collections to meet any such liabilities.

1913, c. 89, s. 8.

See annotations under section 6509.

6512. Investment of funds. Every society shall invest its funds only in securities permitted by the laws of this state for the investment of the assets of life insurance companies: Provided, that any foreign society permitted or seeking to do business in this state, which invests its funds in accordance with the laws of the state in which it is incorporated where it has such laws, shall be held to meet the requirements of this article for the investment of funds.

1913, c. 89, s. 9.

6513. Application of funds. Every provision of the laws of the society for payment by its members, in whatever form made, shall distinctly state the purpose of the same and the proportion thereof which may be used for expenses, and no part of the money collected for mortuary or disability purposes or the net accretions of either or any of said funds shall be used for expenses.

1913, c. 89, s. 10.

6514. Powers of existing societies retained; reincorporation. Any society now engaged in transacting business in this state may exercise, after the passage of this article, all of the rights conferred thereby, and all the rights, powers, and privileges now exercised or possessed by it under its charter or articles of incorporation not inconsistent with this article, if incorporated; or, if it be a voluntary association, it may incorporate hereunder. But no society already organized shall be required to reincorporate hereunder, and any such society may amend its articles of incorporation from time to time in the manner provided by law.

1913, c. 89, s. 12.

6515. Mergers and transfers. No domestic society shall merge with or accept the transfer of the membership or funds of any other society unless such merger or transfer is evidenced by a contract in writing, setting out in full the terms and conditions of such merger or transfer, and is filed with the insurance commissioner of this state, together with a sworn statement of the financial condition of each of the societies, by its president and secretary or corresponding officers, and a certificate duly verified under oath of said officers of each of the contracting societies that such merger or transfer has been approved by a vote of two-thirds of the members of the supreme legislative or governing body of each of the societies.

Upon the submission of such contract, financial statements, and certificates, the insurance commissioner shall examine the same, and if he shall find such financial statements to be correct and the contract to be in conformity with the provisions of this section, and that such merger or transfer is just and equitable to the members of each of the societies, he shall approve the merger or transfer, issue his certificate to that effect, and thereupon the contract of merger or transfer shall be of full force and effect.

In case such contract is not approved, the fact of its submission and its contents shall not be disclosed by the insurance commissioner.

1913, c. 89, s. 13.

6516. Annual license. Societies authorized to transact business in this state may have their authority renewed annually, but in all cases to terminate on the first day of the succeeding April; and the license shall, upon payment of license fee, continue in full force and effect until the new license is issued or specifically refused. For each license or renewal the society shall pay the insurance commissioner twenty-five dollars. A duly certified copy or duplicate of such license shall be prima facie evidence that the licensee is a fraternal benefit society within the meaning of this article.

1913, c. 89, s. 14.

6517. Accident societies may be licensed. Any fraternal benefit society heretofore organized and incorporated, and operating within the definition set forth in this article, providing for benefits in case of death or disability resulting solely from accidents, but which does not obligate itself to pay death or sick benefits, may be licensed under the provisions of this article, and shall have all the privileges and be subject to all the provisions and regulations of this article, except the provisions requiring medical examinations, valuations of benefit certificates, and that the certificate shall specify the amount of benefits.

1913, c. 89, s. 27.

6518. Certain societies not included. Nothing contained in this article shall be construed to affect or apply to societies which limit their membership to any one hazardous occupation, nor to similar societies which do not issue insurance certificates, nor to an association of local lodges of a society now doing business in this state which provides death benefits not exceeding five hundred dollars to any one person or disability benefits not exceeding three hundred dollars in any one year to any one person, or both, nor to any contracts of reinsurance business on such plan in this state, nor to domestic societies which limit their membership to the employees of a particular city or town, designated firm, business house, or corporation, nor to domestic lodges, orders, or associations of a purely religious, charitable, and benevolent description, which do not provide for a death benefit of more than one hundred dollars, or for disability benefits of more than one hundred and fifty dollars to any one person in any one year. The insurance commissioner may require from any society such information as will enable him to determine whether such society is exempt from the provisions of this article.

1913, c. 89, s. 26.

6519. Reports to insurance commissioner. 1. *Annual report.* Every society transacting business in this state shall annually, on or before the first day of March, file with the insurance commissioner, in such form as he may require, a statement, under oath of its president and secretary or corresponding officers, of its condition and standing on the thirty-first day of December next preceding, and of its transactions for the year ending on that date, and also shall furnish such other information as the commissioner may deem necessary to a proper exhibit of its business and plan of working. The commissioner may at other times require any further statement he may deem necessary to be made relating to such society.

2. *Valuation of certificates.* In addition to the annual report herein required, each society shall annually report to the commissioner a valuation of its certifi-

cates in force on December thirty-first, last preceding, excluding those issued within the year for which the report is filed, in cases where the contributions for the first year in whole or in part are used for current mortality and expenses: Provided, the first report of valuation shall be made as of December thirty-first, one thousand nine hundred and twelve. Such report of valuation shall show, as contingent liabilities, the present mid-year value of the promised benefits provided in the constitution and laws of such society under certificates then subject to valuation; and as contingent assets, the present mid-year value of the future net contributions provided in the constitution and laws as the same are in practice actually collected. At the option of any society, in lieu of the above, the valuation may show the net value of the certificates subject to valuation hereinbefore provided, and the net value, when computed in case of monthly contributions, may be the mean of the terminal values for the end of the preceding and of the current insurance years.

3. *Valuation ascertained.* Such valuation shall be certified by a competent accountant or actuary, or, at the request and expense of the society, verified by the actuary of the department of insurance of the home state of the society, and shall be filed with the commissioner within ninety days after the submission of the last preceding annual report. The legal minimum standard of valuation for all certificates, except for disability benefits, shall be the national fraternal congress table of mortality as adopted by the national fraternal congress, August twenty-third, one thousand eight hundred and ninety-nine, or, at the option of the society, any higher table; or, at its option, it may use a table based upon the society's own experience of at least twenty years and covering not less than one hundred thousand lives with interest assumption not more than four per centum per annum. Each such valuation report shall set forth clearly and fully the mortality and interest basis and the method of valuation. Any society providing for disability benefits shall keep the net contributions for such benefits in a fund separate and apart from all other benefit and expense funds and the valuation of all other business of the society: Provided, that where a combined contribution table is used by a society for both death and permanent total disability benefits, the valuation shall be according to tables of reliable experience, and in such case a separation of the funds shall not be required.

4. *Test of solvency.* The valuation herein provided for shall not be considered or regarded as a test of the financial solvency of the society, but each society shall be held to be legally solvent so long as the funds in its possession are equal to or in excess of its matured liabilities.

5. *Report mailed to members.* A report of such valuation and an explanation of the facts concerning the condition of the society thereby disclosed shall be printed and mailed to each beneficiary member of the society not later than June first of each year; or, in lieu thereof, such report of valuation and showing of the society's condition as thereby disclosed may be published in the society's official paper, and the issue containing the same mailed to each beneficiary member of the society.

1913, c. 89, s. 20.

6520. Additional or increased rates. The laws of such society shall provide that if the stated periodical contributions of the members are insufficient to pay all

matured death and disability claims in full, and to provide for the creation and maintenance of the funds required by its laws, additional, increased, or extra rates of contribution shall be collected from the members to meet such deficiency; and such laws may provide that, upon the written application or consent of the member, his certificate may be charged with its proportion of any deficiency disclosed by valuation, with interest not exceeding five per cent per annum.

1913, c. 89, s. 20.

See annotations under section 6509.

6521. Provisions to insure future security. If the valuation of the certificates, as hereinbefore provided, on December thirty-first, one thousand nine hundred and seventeen, shall show that the present value of future net contributions, together with the admitted assets, is less than the present value of the promised benefits and accrued liabilities, such society shall thereafter maintain said financial condition at each succeeding triennial valuation in respect of the degree of efficiency as shown in the valuation as of December thirty-first, one thousand nine hundred and seventeen. If at any succeeding triennial valuation such society does not show at least the same condition, the commissioner shall direct that it thereafter comply with the requirements herein specified. If the next succeeding triennial valuation after the receipt of such notice shall show that the society has failed to maintain the condition required herein, the commissioner may, in the absence of good cause shown for such failure, institute proceedings for the dissolution of such society, in accordance with the provisions of this article, or in the case of a foreign society, its license may be canceled in the manner provided in this article.

Any such society, shown by any triennial valuation, subsequent to December thirty-first, one thousand nine hundred and seventeen, not to have maintained the condition herein required, shall, within two years thereafter, make such improvement as to show a percentage of deficiency not greater than as of December thirty-first, one thousand nine hundred and seventeen, or thereafter, as to all new members admitted, be subject, so far as stated rates of contributions are concerned, to the provisions of this article, applicable in the organization of new societies: Provided, that the net mortuary or beneficiary contributions and funds of such new members shall be kept separate and apart from the other funds of the society. If such required improvement is not shown by the succeeding triennial valuation, then the new members may be placed in a separate class and their certificates valued as an independent society in respect of contributions and funds.

1913, c. 89, s. 20 (a).

6522. Valuation on accumulation basis; tabular basis. In lieu of the requirements of the two preceding sections, any society accepting in its laws the provisions of this section may value its certificates on a basis herein designated "accumulation basis," by crediting each member with the net amount contributed for each year, and with interest at approximately the net rate earned and by charging him with his shares of the losses for each year, herein designated "cost of insurance," and carrying the balance, if any, to his credit. The charge for the cost of insurance may be according to the actual experience of the society applied to a table of mortality recognized by the law of this state, and shall take into consideration the amount at risk during each year, which shall be the amount

payable at death, less the credit to the member. Except as specifically provided in its articles or laws or contracts, no charge shall be carried forward from the first valuation hereunder against any member of any past share of losses exceeding the contributions and credit. If, after the first valuation, any member's share of losses for any year exceeds his credit, including the contribution for the year, the contribution shall be increased to cover his share of the losses. Any such excess share of losses chargeable to any member may be paid out of a fund or contributions especially created or required for such purpose.

Any member may transfer to any plan adopted by the society with net rates on which tabular reserves are maintained, and on such transfer shall be entitled to make such application of his credit as provided in the laws of the society.

Certificates issued, rerated, or readjusted on a basis providing for adequate rates with adequate reserves to mature such certificates upon assumptions for mortality and interest recognized by the law of this state, shall be valued on such basis, herein designated the "Tabular Basis": Provided, that if on the first valuation under this section a deficiency in reserve shall be shown for any such certificate, the same shall be valued on the accumulation basis.

Whenever, in any society having members upon the tabular basis and upon the accumulation basis, the total of all costs of insurance provided for any year shall be insufficient to meet the actual death and disability losses for the year, the deficiency shall be met for the year from the available funds after setting aside all credits in the reserve; or from increased contributions or by an increase in the number of assessments applied to the society as a whole or to classes of members as may be specified in its laws. Savings from a lower amount of death losses may be returned in like manner as may be specified in its laws.

If the laws of the society so provide, the assets representing the reserves of any separate class of members may be carried separately for such class as if in an independent society, and the required reserve accumulation of such class so set apart shall not thereafter be mingled with the assets of other classes of the society.

A table showing the credits to individual members for each age and year of entry and showing opposite each credit the tabular reserve required on the whole life or other plan of insurance specified in the contract, according to assumptions for mortality and interest recognized by the law of this state and adopted by the society, shall be filed by the society with each annual report, and also be furnished to each member before July first of each year.

In lieu of the aforesaid statement there may be furnished to each member within the same time a statement giving the credit for such member and giving the tabular reserve and level rate required for a transfer carrying out the plan of insurance specified in the contract. No table or statement need be made or furnished where the reserves are maintained on the tabular basis.

For this purpose individual bookkeeping accounts for each member shall not be required, and all calculations may be made by actuarial methods.

Nothing herein contained shall prevent the maintenance of such surplus over and above the credits on the accumulation basis and the reserves on the tabular basis pursuant to its laws; nor be construed as giving to the individual member

any right or claim to any such reserve or credit other than in manner as expressed in the contract and its laws; nor as making any such reserve or credits a liability in determining the legal solvency of the society.

1913, c. 89, s. 20 (b).

6523. Examination of domestic societies. The insurance commissioner, or any person he may appoint, shall have power of visitation and examination into the affairs of any domestic society. He may employ assistants for the purpose of such examination, and he, or any person he may appoint, shall have free access to all the books, papers, and documents that relate to the business of the society, and may summon and qualify as witness under oath and examine its officers, agents, and employees or other persons in relation to the affairs, transactions, and condition of the society.

The expense of such examination shall be paid by the society examined upon statement furnished by the insurance commissioner, and the examination shall be made at least once in three years.

1913, c. 89, s. 21.

6524. Proceedings for dissolution. When after examination the insurance commissioner is satisfied that any domestic society has failed to comply with any provision of this article, or is exceeding its powers, or is not carrying out its contracts in good faith, or is transacting business fraudulently; or whenever any domestic society, after the existence of one year or more, shall have a membership of less than four hundred (or shall determine to discontinue business), the insurance commissioner may present the facts relating thereto to the attorney-general, who shall, if he deem the circumstances warrant, commence an action in quo warranto in a court of competent jurisdiction, and such court shall thereupon notify the officers of such society of a hearing, and if it shall then appear that such society should be closed, it shall be enjoined from carrying on any further business, and a receiver shall be appointed to take possession of its books, papers, moneys, and other assets and immediately, under the direction of the court, proceed to close its affairs and distribute its funds to those entitled thereto.

No such proceedings shall be commenced by the attorney-general against any such society until after notice has been duly served on its chief executive officers and a reasonable opportunity given to it, on a date to be named in the notice, to show cause why such proceedings should not be commenced.

1913, c. 89, s. 21.

6525. Proceedings only by attorney-general. No application for injunction against or proceedings for the dissolution of or the appointment of a receiver for any such domestic society or branch thereof shall be entertained by any court in this state unless the same is made by the attorney-general.

1913, c. 89, s. 22.

6526. Examination of foreign societies. The insurance commissioner or any person whom he may appoint may examine any foreign society transacting or applying for admission to transact business in this state. The commissioner may employ assistants, and he, or any person he may appoint, shall have free access to all the books, papers, and documents that relate to the business of the society, and may summon and qualify as witness under oath and examine its

officers, agents, and employees and other persons in relation to the affairs, transactions, and condition of the society. He may, in his discretion, accept in lieu of such examination the examination of the insurance department of the state, territory, district, province, or country where such society is organized. The actual expenses of examiners making any such examination shall be paid by the society upon statement furnished by the insurance commissioner.

If any such society or its officers refuse to submit to such examination or to comply with the provisions of the section relative thereto, its authority to write new business in this state shall be suspended or license refused until satisfactory evidence is furnished the commissioner relating to its condition and affairs, and during such suspension the society shall not write new business in this state.

1913, c. 89, s. 23.

6527. No adverse publications. Pending, during, or after an examination or investigation of any such society, either domestic or foreign, the insurance commissioner shall make public no financial statement, report, or finding, nor shall he knowingly permit to become public any financial statement, report, or finding affecting the status, standing, or rights of any such society, until a copy thereof has been served upon the society, at its home office, nor until the society has been afforded a reasonable opportunity to answer any such financial statement, report, or finding, and to make such showing in connection therewith as it may desire.

1913, c. 89, s. 24.

6528. Revocation of license. When the insurance commissioner on investigation is satisfied that any foreign society transacting business under this article has exceeded its powers, or has failed to comply with any provisions of this article, or is conducting business fraudulently, or is not carrying out its contracts in good faith, he shall notify the society of his findings, and state in writing the grounds of his dissatisfaction, and after reasonable notice require the society, on a date named, to show cause why its license should not be revoked. If on the date named in the notice such objections have not been removed to the satisfaction of the commissioner, or the society does not present good and sufficient reasons why its authority to transact business in this state should not at that time be revoked, he may revoke the authority to continue business in this state. All decisions and findings of the commissioner made under the provisions of this section may be reviewed by proper proceedings in any court of competent jurisdiction, as provided in this article.

1913, c. 89, s. 25.

6529. Criminal offenses. Any person, officer, member, or examining physician of any society authorized to do business under this article who shall knowingly or wilfully make any false or fraudulent statement or representation in or with reference to any application for membership, or for the purpose of obtaining money from or benefit in any society transacting business under this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisoned in the county jail for not less than thirty days nor more than one year, or both, in the discretion of the court.

Any person who shall solicit membership for, or in any manner assist in procuring membership in any fraternal benefit society not licensed to do business

in this state, or who shall solicit membership for, or in any manner assist in procuring membership in any such society not authorized as herein provided, to do business as herein defined in this state, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than fifty nor more than two hundred dollars.

Any society, or any officer, agent, or employee thereof, neglecting or refusing to comply with, or violating, any of the provisions of this article, the penalty for which neglect, refusal, or violation is not specified in this section, shall be fined not exceeding two hundred dollars upon conviction thereof.

1913, c. 89, s. 28.

NOTE.—False oath to any statement to obtain payment of benefit, or to any report required of fraternal benefit societies, is perjury. See Crimes, ss. 4369, 4370.

ART. 27. WHOLE FAMILY PROTECTION

6530. Insurance on children. Any fraternal order or fraternal benefit society authorized to do business in this state and operating on the lodge plan may provide in its constitution and by-laws, in addition to other benefits provided for therein, for the payment of death or annuity benefits upon the lives of children between the ages of two and eighteen years at next birthday, for whose support and maintenance a member of such society is responsible. The society may at its option organize and operate branches for such children and membership in local lodges, and initiation therein shall not be required of such children, nor shall they have any voice in the management of the society. The total benefits payable as above provided shall in no case exceed the following amounts at ages at next birthday at time of death, respectively, as follows: two, thirty-four dollars; three, forty dollars; four, forty-eight dollars; five, fifty-eight dollars; six, one hundred and forty dollars; seven, one hundred and sixty-eight dollars; eight, two hundred dollars; nine, two hundred and forty dollars; ten, three hundred dollars; eleven, three hundred and eighty dollars; twelve, four hundred and sixty dollars; thirteen to fifteen, five hundred and twenty dollars; and sixteen to eighteen years, where not otherwise authorized by law, six hundred dollars.

1917, c. 239, s. 1.

6531. Medical examination; certificates and contributions. No benefit certificate as to any child shall take effect until after medical examination or inspection by a licensed medical practitioner, in accordance with the laws of the society, nor shall any such benefit certificate be issued unless the society shall simultaneously put in force at least five hundred such certificates, on each of which at least one assessment has been paid, nor where the number of lives represented by such certificate falls below five hundred. The death benefit contributions to be made upon such certificate shall be based upon the "Standard Mortality Table" or the "English Life Table Number Six," and a rate of interest not greater than four per cent per annum, or upon a higher standard; but contributions may be waived or returns may be made from any surplus held in excess of reserve and other liabilities, as provided in the by-laws; and extra contributions shall be made if the reserves hereafter provided for become impaired.

1917, c. 239, s. 2.

6532. Reserve fund; exchange of certificates. Any society entering into such insurance agreements shall maintain on all such contracts the reserve required by the standard of mortality and interest adopted by the society for computing contributions as provided in the preceding section, and the funds representing the benefit contributions and all accretions thereon shall be kept as separate and distinct funds, independent of the other funds of the society, and shall not be liable for nor used for the payment of the debts and obligations of the society other than the benefits herein authorized. A society may provide that when a child reaches the minimum age for initiation into membership in such society, any benefit certificate issued hereunder may be surrendered for cancellation and exchanged for any other form of certificate issued by the society: Provided, that such surrender will not reduce the number of lives insured in the branch below five hundred; and upon the issuance of such new certificate any reserve upon the original certificate herein provided for shall be transferred to the credit of the new certificate. Neither the person who originally made application for benefits on account of such child, nor the beneficiary named in such original certificate, nor the person who paid the contributions, shall have any vested right in such new certificate, the free nomination of a beneficiary under the new certificate being left to the child so admitted to benefit membership.

1917, c. 239, s. 3.

6533. Separation of funds. An entirely separate financial statement of the business transactions and of assets and liabilities arising therefrom shall be made in its annual report to the insurance commissioner by any society availing itself of the provisions hereof. The separation of assets, funds, and liabilities required hereby shall not be terminated, rescinded, or modified, nor shall the funds be diverted for any use other than as specified in the preceding section, as long as any certificates issued hereunder remain in force, and this requirement shall be recognized and enforced in any liquidation, reinsurance, merger, or other change in the condition or the status of the society.

1917, c. 239, s. 4.

6534. Payments to expense or general fund. Any society shall have the right to provide in its laws and the certificate issued hereunder for specified payments on account of the expense or general fund, which payments shall or shall not be mingled with the general fund of the society, as its constitution and by-laws may provide.

1917, c. 239, s. 5.

6535. Continuation of certificates. In the event of the termination of membership in the society by the person responsible for the support of any child on whose account a certificate may have been issued as provided herein, the certificate may be continued for the benefit of the estate of the child, provided the contributions are continued, or for the benefit of any other person responsible for the support and maintenance of such child who shall assume the payment of the required contributions.

1917, c. 239, s. 6.

ART. 28. GENERAL PROVISIONS FOR SOCIETIES

6536. Appointment of trustees to hold property. The lodges of Masons, Odd Fellows, Knights of Pythias, camps of Woodmen of the World, councils of the Junior Order of United American Mechanics, orders of the Elks, Young Men's Christian Associations, Young Women's Christian Associations, societies for the care of orphan and indigent children, societies for the rescue of fallen women, and any other benevolent or fraternal orders and societies, may appoint from time to time suitable persons trustees of their bodies or societies, in such manner as they deem proper, which trustees, and their successors, shall have power to receive, purchase, take, and hold property, real and personal, in trust for such society or body. The trustees shall have power, when instructed so to do by resolution adopted by the society or body which they represent, to sell and convey in fee simple any real or personal property owned by the society or body; and the conveyances so made by the trustees shall be effective to pass the property in fee simple to the purchaser. If there shall be no trustee, then any real or personal property which could be held by such trustees shall vest in and be held by such charitable, benevolent, religious, or fraternal orders and societies, respectively, according to such intent. This shall not affect vested rights nor apply to suits pending on the ninth day of March, one thousand nine hundred and fifteen.

1907, c. 22; 1915, cc. 149, 186.

6537. Unauthorized wearing of badges, etc. Any person who fraudulently and wilfully wears the badge or button of any secret or fraternal organization or society, either in the identical form or in such near resemblance thereto as to be a colorable imitation thereof, or who fraudulently and wilfully uses the name of any such order or organization, the titles of its officers, or its insignia, ritual, or ceremonies, unless entitled to wear or use the same under the constitution and by-laws, rules and regulations of such secret or fraternal organization or society, shall be deemed guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of fifty dollars or imprisonment for thirty days, in the discretion of the court.

1907, c. 968; 1911, c. 37; 1915, c. 252.

CHAPTER 107

INTERNAL IMPROVEMENTS

SEC.

- 6538. Board of internal improvements; incorporation; membership.
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6538. Board of internal improvements; incorporation; membership. The president and directors of the board of internal improvements shall consist of the governor of the state, who shall, ex officio, be president thereof, and of two commissioners to be appointed biennially by the governor, with the advice of the senate; any two of whom shall constitute a board for the transaction of business; and in case of vacancies occurring in the board, the same shall be filled by the other members. The governor and said members shall be a corporate body, under the name and style of The President and Directors of the Board of Internal Improvements, and shall have all the rights, powers, and privileges of a corporation which may be necessary to enable it to discharge the duties imposed on it and no more.

Rev., s. 4835; Code, s. 1688; R. C., c. 61, s. 1; 1819, c. 989, s. 3; 1836, c. 22, s. 2; 1874-5, cc. 83, 202; 1899, c. 68; 1901, c. 252.

Case of historical interest: *Bryan v. Patrick*, 124-651.

6539. Secretary; clerk. The private secretary to the governor shall be ex officio secretary to the board. The board may appoint a clerk of the board whenever in its opinion the public service shall require it.

Rev., s. 4836; 1909, c. 881, s. 2.

6540. Meetings; compensation of members. The board may hold their sessions whenever and wherever the governor may direct. The members of the board shall receive, each, five dollars per day and their traveling expenses for the time they may be employed in the public service.

Rev., ss. 2758, 4836; Code, s. 1689; R. C., c. 61, s. 2; 1819, c. 989, s. 7; 1836, c. 22, s. 4; 1874-5, cc. 83, 203; 1903, c. 729.

6541. By-laws and regulations. The board may make such rules for the regulation of its proceedings, and all necessary by-laws, rules and regulations for the

better ordering of the conduct of its officers, agents, and servants, as to them shall seem expedient, not inconsistent with the laws of the state.

Rev., s. 4837; Code, s. 1690; R. C., c. 61, s. 3; 1819, c. 989, s. 9; 1874-5, cc. 83, 202.

6542. Record of proceedings. The board shall keep a fair and true record of all its proceedings, which shall at all times be open to the inspection of members of the general assembly and others interested therein.

Rev., s. 4839; Code, s. 1692; R. C., c. 61, s. 4.

6543. State a stockholder in internal improvement corporations. When an appropriation is made by the state to any work of internal improvement conducted by a corporation, the state shall be considered, unless otherwise directed, a stockholder in such corporation, and shall have as many shares as may correspond with the amount of money appropriated; and the acceptance of such money shall be deemed to be a consent of the corporation to the terms herein expressed.

Rev., s. 4847; Code, s. 1697; R. C., c. 61, s. 8; 1819, c. 989, s. 12; 1874-5, c. 83.

6544. Board controls state's interest in internal improvements. The board shall have charge of all the state's interest in all railroads, canals, and other works of internal improvement.

Rev., s. 4838; Code, s. 1691; 1868-9, c. 270, s. 97; 1874-5, c. 83; 1917, c. 170, s. 2.

6545. President of railroad, etc., reports to board; penalty. The president or other chief officer of every railroad, canal, or other public work of internal improvement in which the state owns an interest shall, when required so to do by the board, make or cause to be made to the board of internal improvements a written report of its affairs. The written report of the president or chief officer of railroads, canals, or other public work of internal improvement shall cover the affairs of his company for that year, showing—

1. Number of shares of stock owned by the state.
2. Number of shares of stock owned otherwise.
3. Face value of each of such shares.
4. Market value of each of such shares.
5. Amount of bonded debt and for what purpose contracted.
6. Amount of other debt and how incurred.
7. If interest on bonded debt has been punctually paid as agreed; if not, how much in arrears.
8. Amount of gross receipts for past year and from what sources derived.
9. An itemized account of expenditures for past year.
10. Any lease or sale of property of said company, or any part thereof, to whom made, for what consideration, and for what length of time.
11. Suits at law pending against his company concerning its bonded debt, or in which title to whole or any part of such road or canal is concerned.
12. Any sales of stock owned by the state, by whose order made, and disposition of the proceeds.

Any person failing to report as required by this section shall be guilty of a misdemeanor, and be fined not less than one thousand dollars nor more than five thousand dollars, or be imprisoned not less than one nor more than five years at hard labor in the state's prison.

Rev., ss. 3595, 3840, 3841; Code, s. 1693; 1868-9, c. 270, s. 100; 1874-5, c. 202, s. 2.

6546. Board reports to general assembly; contents. The board shall biennially report to the general assembly—

1. The condition of all railroads, canals, or other works of internal improvement in which the state has an interest, and they shall at the same time suggest such improvement, enlargement, or extension of such work as they shall deem proper, and such new works of similar nature as shall seem to them to be demanded by the growth of trade or the general prosperity of the state.

2. The amount, condition, and character of the state's interest in other railroads, roads, canals, or other works of internal improvement in which the state has taken stock, to which she has loaned money, or whose bonds she holds as security.

3. The condition of such roads or other corporate bodies, in detail, as are referred to in the previous section, giving their entire financial condition, the amount and market value of the stock, receipts and disbursements for the previous year or since the last report; the amount of real and personal property of such corporations, its estimated value, and such suggestions with regard to the state's interest in the same as may to them seem warranted by the status of the roads or corporations.

4. The names of all persons failing or refusing to report as is required by law.

This report the governor shall transmit to the general assembly with his message.

Rev., s. 4839; Code, s. 1692; R. C., c. 61, s. 4; 1819, c. 989, s. 10; 1868-9, c. 270, s. 98; 1874-5, c. 83, c. 202, s. 3.

6547. Board to approve encumbrance on state's interest in corporations. No corporation or company in which the state has or owns any stock or any interest shall sell, lease, mortgage, or otherwise encumber its franchise, right of way, or other property, except by and with the approval and consent of the board of internal improvements and the council of state.

1911, c. 131, s. 1.

6548. Board to appoint state proxies. The board of internal improvements shall appoint on behalf of the state all such officers or agents as, by any act incorporating a company for the purpose of internal improvement, are allowed to represent the stock or other interests which the state may have in such company; and such person or persons shall cast the vote to which the state may be entitled in all the meetings of the stockholders of such company under the direction of said board; and the said board may, if in its opinion the public interest so requires, remove or suspend such persons, officers, agents, proxies, or directors in its discretion.

Rev., s. 4843; Code, s. 1718; R. C., c. 61, s. 38; 1874-5, c. 83.

6549. Special investigations by member of board at instance of governor. The governor is authorized and empowered, whenever he may think the public service requires it, to have the affairs of any railroad, turnpike, canal, or other public improvement, and the official conduct of any official thereof, investigated by a member of the board of internal improvements, and to take such action concerning any matter reported upon as the said board may deem to the interest

of the state; and the governor may suspend or remove from office any of said officials, if in his opinion the interest of the state demands it.

Rev., s. 4844; Code, s. 1719; 1879, c. 281; 1903, c. 729; 1917, c. 170, s. 2.

6550. Powers and compensation of investigating member. The member of the board appointed for the investigation mentioned in the preceding section shall have power to administer oaths, send for persons and papers, and all powers granted to a committee of investigation appointed by the general assembly. He shall receive as compensation such sum as the governor, by and with the advice of the council of state, shall deem just.

Rev., s. 4845; Code, s. 1720; 1879, c. 281, s. 2; 1909, c. 881, s. 1.

6551. Writs of investigating member executed. Sheriffs shall execute writs of such member of the board of internal improvements as they would for a judicial officer of the state, and shall be allowed the same compensation therefor.

Rev., s. 4846; Code, s. 1721; 1879, c. 281, s. 3.

6552. Contumacious witnesses punished. If any person shall refuse to obey any summons of, or answer any questions when required so to do by a member of the board of internal improvements who is making an investigation as authorized by law, he shall be guilty of a misdemeanor.

Rev., s. 3693; Code, s. 1721; 1879, c. 281, s. 3.

6553. Annual investigations of state departments; powers; reports. It shall be the duty of the board of internal improvements to inspect and investigate annually each agency and department of government, and to make reports thereon to the governor, in which report, among other things, shall be set forth the expenses of such agency or department, and the necessity therefor. The board, in making the investigations provided for in this section, shall have power to administer oaths, send for persons and papers, and all powers granted to a committee of investigation appointed by the general assembly. In its report to the governor it shall make recommendations of such changes as in its opinion will improve the public service. For the purpose of performing the duties imposed by this section, the board is authorized and empowered to employ expert accountants, who shall be paid such sum as may be agreed upon, which must, however, be approved by the governor.

1913, c. 176, ss. 1, 2.

NOTE.—For other investigations and reports on state departments, etc., see State Departments, Institutions and Commissions.

CHAPTER 108

LABOR REGULATIONS

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- 6571. Institution of foreign suit, etc., evidence of intent to violate.
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ART. 1. VARIOUS REGULATIONS

6554. Week's work to be sixty hours. Sixty hours shall constitute a week's work in all factories and manufacturing establishments of the state, and no minor nor woman shall be worked in such factory or establishment a longer period than sixty hours in one week and no adult male shall be worked in such factory or establishment for a longer period than sixty hours in one week unless there shall be a written contract entered into between said adult male and his employer to that effect in which the employer shall agree to pay said adult male extra compensation for extra hours he may work. No employee in any factory or manufacturing establishment in this state shall be worked exceeding eleven hours in any one day: Provided, this section shall not apply to engineers, firemen, superintendents, overseers, section and yard hands, office men, watchmen, or repairers of breakdowns.

1915, c. 148, s. 2.

6555. Seats for women employees; failure to provide a misdemeanor. All persons, firms, or corporations who employ females in a store, shop, office, or manufacturing establishment, as clerks, operatives, or helpers in any business, trade, or occupation carried on or operated in the state of North Carolina, shall be required to procure and provide proper and suitable seats for all such females, and shall

permit the use of such seats, rests, or stools as may be necessary, and shall not make any rules, regulations, or orders preventing the use of such seats, stools, or rests when any such female employee or employees are not actively employed or engaged in their work in such business or employment.

If any employer of female help in the state of North Carolina shall fail, neglect, or refuse to provide seats, as provided in this article, on or before the first day of June, one thousand nine hundred and nine, or shall make any rules, orders, or regulations in his or its shop, store, or other place of business requiring females to remain standing when not necessarily employed or engaged in service or labor therein, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five dollars nor more than one hundred dollars, in the discretion of the court.

1909, c. 857, ss. 1, 2.

6556. Medical chests in factories; failure to provide a misdemeanor. Every person, firm, or corporation operating a factory or shop employing over twenty-five laborers, in which machinery is used for any manufacturing purpose, or for any purpose except for elevation or for heating or hoisting apparatus, shall at all times keep and maintain free of expense to the employees a medical or surgical chest which shall contain two porcelain pans, two tourniquets, gauze, absorbent cotton, adhesive plasters, bandages, antiseptic soap, one bottle of carbolic acid with directions on bottle, one bottle antiseptic tablets, one pair of scissors, one folding stretcher, all of which shall not cost to exceed ten dollars, for the treatment of persons injured or taken ill upon the premises.

Any person, firm, or corporation violating this section shall be subject to a fine of not less than five dollars nor more than twenty-five dollars for every week during which such violation continues.

1911, c. 57.

6557. Shelter at railroad division points required; failure to provide a misdemeanor. It shall be the duty of every person, firm, or corporation that may now or hereafter own, control, or operate any line of railroad in the state of North Carolina, to erect and maintain at every division point where cars are regularly taken out of trains for repairs or construction work, or where other railroad equipment is regularly made, repaired, or constructed, a building or shed with a suitable and sufficient roof over the repair and construction track or tracks so as to provide that all men or employees permanently employed in the construction and repair of cars, trucks, or other railroad equipment of whatever description shall be under shelter and protected during snows, rains, sleets, hot sunshine, and other inclement weather: Provided, the corporation commission shall have the power to direct the points at which sheds shall be erected, and the character of the sheds: Provided further, that such order shall only be made after a hearing of which public notice shall have been given.

On and after the first day of December, nineteen hundred and thirteen, any person, firm, or corporation failing to comply with the requirements of this section shall be guilty of a misdemeanor, and for each offense shall be fined not less than one hundred dollars nor more than five hundred dollars. Each day of such failure shall constitute a separate offense.

1913, c. 65; 1913, c. 117.

6558. Railroad employees to be paid twice a month. All persons, firms, companies, corporations, or associations owning, leasing, or operating any railroad or railroads, wholly or partially within this state, shall pay and settle with their employees engaged or employed in shops, round-houses, or repair shops within this state at least twice in each month, which settlements shall not be less than two weeks nor more than three weeks apart, and shall, in such settlements, pay such employees the full amounts due them for their work and services up to the date of the preceding settlement, and such payment shall be made in lawful money of the United States, or by check or cash order redeemable by the maker thereof for its face value in lawful money of the United States upon demand of or presentation by the lawful holder thereof: Provided, this section shall not apply to repair shops where less than ten employees are engaged.

1915, c. 92.

ART. 2. SEPARATE TOILETS FOR SEXES AND RACES

6559. When separate toilets required. All persons and corporations employing males and females in any manufacturing industry, or other business employing more than two males and females in towns and cities having a population of one thousand persons or more, and where such employees are required to do indoor work chiefly, shall provide and keep in a cleanly condition separate and distinct toilet rooms for such employees, said toilets to be lettered and marked in a distinct manner, so as to separate the white and colored males and females of both sexes: Provided, that the provisions of this section shall not apply to cases where toilet arrangements or facilities are furnished by said employer off the premises occupied by him.

1913, c. 83, s. 1.

6560. Location; intruding on toilets misdemeanor. It shall be the duty of the persons or corporation mentioned under this article to locate their toilets for males and females, white and colored, in separate parts of their buildings or grounds, in buildings hereafter erected, and in those now erected all closets shall be separated by substantial walls of brick or timber, and any employee who shall wilfully intrude or use any toilet not intended for his or her sex or color shall be guilty of a misdemeanor and upon conviction shall be fined five dollars.

1913, c. 83, s. 4.

6561. Failure to provide toilets a misdemeanor. Any person or corporation refusing to comply with the provisions of the second preceding section shall be guilty of a misdemeanor, and upon conviction fined five dollars for the first offense and five dollars for each day they shall fail to make the provisions required under this article.

1913, c. 83, s. 2.

6562. Police in towns to enforce article. It shall be the duty of the police officers of any town or city to investigate the places of business of any person or corporation employing males and females and see that the provisions of this article are put in force, and it shall be their duty to swear out a warrant before the

mayor or other proper officer of any town or city and prosecute all persons, corporations, and managers of corporations violating any of the provisions of this article.

1913, c. 83, s. 3.

6563. Sheriff in county to enforce article. When any persons or corporations locate outside of any city or town, its manufacturing plant or other business, it shall be the duty of the sheriff of the county to make investigation of the condition of the toilets used by such manufacturing plant or business and see that the provisions of this article are complied with, and it shall be his duty to swear out a warrant before a justice of the peace and prosecute any one violating the provisions of this article.

1913, c. 83, s. 5.

6564. Counties exempted from article. This article shall not apply to Sampson, Harnett, Lee, Johnston, Northampton, Cleveland, Rutherford, Polk, and Henderson counties.

1913, c. 83, s. 6.

ART. 3. HOURS OF SERVICE FOR EMPLOYEES OF CARRIERS

6565. Maximum continuous service. It shall be unlawful for any common carrier, its officers or agents, subject to this article, to require or permit any employee, subject to this article, to be or remain on duty for a longer period than sixteen consecutive hours, and whenever any such employee of such common carrier shall have been continuously on duty for sixteen hours he shall be relieved and not required or permitted again to go on duty until he has had at least ten consecutive hours off duty; and no such employee who has been on duty sixteen hours in the aggregate in any twenty-four-hour period shall be required or permitted to continue or again go on duty without having had at least eight consecutive hours off duty: Provided, that no operator, train dispatcher, or other employee who by the use of the telegraph or telephone dispatches, reports, transmits, receives, or delivers orders pertaining to or affecting train movements shall be required or permitted to be or remain on duty for a period longer than nine hours in any twenty-four-hour period in all towers, offices, places, and stations continuously operated night and day, nor for a longer period than thirteen hours in all towers, offices, places, and stations operated only during the daytime, except in case of emergency, when the employees named in this proviso may be permitted to be and remain on duty for four additional hours in a twenty-four-hour period on not exceeding three days in any week: Provided further, the corporation commission may, after a full hearing in a particular case and for good cause shown, extend the period within which a common carrier shall comply with the provisions of this proviso as to such case.

1911, c. 112, s. 2.

Under act of 1907, c. 456 (Pell's Revisal, sections 3754a, 3754b), which was repealed by act of 1911, c. 112, a railroad employee, alleging that he had been injured by the railroad on account of working overtime, could not recover damages, his own act being a violation of law: *Lloyd v. R. R.*, 151-536.

6566. Penalty for violation. Any such common carrier, or any officer or agent thereof, requiring or permitting any employee to go, be, or remain on duty in violation of the last preceding section shall be liable to a penalty of not to exceed five hundred dollars for each and every violation, to be recovered in suit or suits to be brought in the name of the state of North Carolina on relation of the corporation commission in the superior court of Wake county or of the county in which the violation of this article occurred; and it shall be the duty of the said corporation commission to bring such suits upon satisfactory information lodged with it; but no such suit shall be brought after the expiration of one year from the state, assign, or transfer the same, for value or otherwise, with intent to mission to lodge with the proper solicitors information of any such violations as may come to its knowledge. In all prosecutions under this article the common carrier shall be deemed to have had knowledge of all acts of all its officers and agents: Provided, that the provisions of this article shall not apply to any case of casualty or unavoidable accident or the act of God; nor where the delay was the result of a cause not known to the carrier or its officer or agent in charge of such employee at the time the said employee left a terminal, and which could not have been foreseen: Provided further, that the provisions of this article shall not apply to the crews of wrecking or relief trains: Provided further, this article shall not be construed to impose a penalty upon any common carrier for any act done in violation of the act of congress, ratified March the fourth, one thousand nine hundred and seven, and entitled "An act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," or any acts amendatory thereof.

1911, c. 112, s. 3.

6567. Corporation commission's power. It shall be the duty of the corporation commission to execute and enforce the provisions of this article, and all powers granted to the corporation commission are extended to it in the execution thereof.

1911, c. 112, s. 4.

ART. 4. EARNINGS OF EMPLOYEES IN INTERSTATE COMMERCE

6568. Collections out of state to avoid exemptions forbidden. No resident creditor or other holder of any book account, negotiable instrument, duebill or other monetary demand arising out of contract, due by or chargeable against any resident wage-earner or other salaried employee of any railway corporation or other corporation, firm, or individual engaged in interstate business shall send out of the state, assign, or transfer the same, for value or otherwise, with intent to thereby deprive such debtor of his personal earnings and property exempt by law from application to the payment of his debts under the laws of the state of North Carolina, by instituting or causing to be instituted thereon against such debtor, in any court outside of this state, in such creditor's own name or in the name of any other person, any action, suit, or proceeding for the attachment or garnishment of such debtor's earnings in the hands of his employer, when such

creditor and debtor and the railway corporation or other corporation, firm, or individual owing the wages or salary intended to be reached are under the jurisdiction of the courts of this state.

1909, c. 504, s. 1.

6569. Resident not to abet collection out of state. No person residing or sojourning in this state shall counsel, aid, or abet any violation of the provisions of section 6568.

1909, c. 504, s. 2.

6570. Remedies for violation of two preceding sections; damages; indictment. Any person violating any provision of the last two sections shall be answerable in damages to any debtor from whom any book account, negotiable instrument, duebill, or other monetary demand arising out of contract shall be collected, or against whose earnings any warrant of attachment or notice of garnishment shall be issued, in violation of the provisions of section 6568, to the full amount of the debt thus collected, attached, or garnisheed, to be recovered by civil action in any court of competent jurisdiction in this state; and any person so offending shall likewise be guilty of a misdemeanor, punishable by a fine of not more than two hundred dollars.

1909, c. 504, s. 3.

6571. Institution of foreign suit, etc., evidence of intent to violate. In any civil or criminal action instituted in any court of competent jurisdiction in this state for any violation of the provisions of sections 6568 and 6569, proof of the institution or prosecution of any action, suit, or proceeding in violation of the provisions of section 6568, or the issuance of service therein of any warrant of attachment, notice, or garnishment or other like writ for the garnishment of earnings of the defendant therein, or of the payment by the garnishee therein of any final judgment rendered in any such action, suit, or proceeding shall be deemed prima facie evidence of the intent of the creditor or other holder of the debt sued upon to deprive such debtor of his personal earnings and property exempt from application to the payment of his debts under the laws of this state, in violation of the provisions of this article.

1909, c. 504, s. 4.

6572. Construction of article. No provision of this article shall be so construed as to deprive any person entitled to its benefits of any legal or equitable remedy already possessed under the laws of this state.

1909, c. 504, s. 5.

CHAPTER 109

LIBRARIES

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ART. 1. STATE LIBRARY

6573. Location. The state library shall occupy the rooms set apart for it in the state administration building.

Rev., s. 5068; 1885, c. 121, s. 7; 1913, c. 99, s. 1.

6574. Trustees; duties and powers. The governor, superintendent of public instruction, and secretary of state, and their respective successors in office, are appointed trustees of the state and document libraries. The board of trustees shall make rules and regulations by which the librarian shall be governed for the pro-

tection and preservation of the books and library; and may make such distribution of the books, reports, and publications belonging to the state as in the judgment of the board is advisable and proper.

Rev., s. 5069; Code, s. 3612; 1871-2, c. 169, s. 3; 1903, cc. 104, 133.

6575. Librarian's seal; certified copies of documents as evidence. It shall be the duty of the secretary of state to furnish the state librarian with a seal of office. The state librarian is authorized to certify to the authenticity and genuineness of any document, paper, or extract from any document, paper, or book or other writing which may be on file in his office. When the certificate is made under his hand and attested by his official seal, it shall be received as prima facie evidence of the correctness of the matters therein contained, and as such shall receive full faith and credit.

Rev., s. 5070; 1905, c. 537.

6576. Records procured and published. The trustees of the state library are directed to procure such of the records of this state, or copies of the same, or of other unpublished material illustrative of the history of the state down to January first, one thousand seven hundred and ninety-one, as may be missing from the archives of the state, and to publish the same in such number of volumes of suitable size as they may deem proper. The trustees of the state library shall cause an index of these records, from the first volume of the colonial records down to January first, one thousand seven hundred and ninety-one, to be prepared and printed in the volume which shall embrace the year one thousand seven hundred and eighty-nine, and in case the library fund shall prove to be insufficient to meet the expenses incurred in carrying out the provisions of this section, the auditor is directed to draw his warrant for such sums as the trustees aforesaid shall certify to him to be needed in said work.

Rev., s. 5071; Code, ss. 3609, 3610; 1881, c. 88; 1883, pub. res., p. 619; 1895, c. 464; 1901, c. 632.

6577. Trustees may sell publications. The trustees of the state library are authorized to sell, on such terms as they may deem proper, any volume printed under the provisions of this chapter that may not be reserved for the use of the public libraries.

Rev., s. 5072; Code, s. 3611; 1881, c. 88, s. 2.

6578. Colonial records sent to certain states. The board of trustees are requested to have forwarded the colonial records of North Carolina to such states as may hereafter supply similar documents to this state.

Rev., s. 5073; 1893, pub. res., p. 489.

6579. Governor to designate documents to be preserved; books bound and labeled. The governor shall designate such portions of the documents, journals, and acts of congress of the United States as he may deem proper to be preserved in the library; may designate which of them are to be bound, of such pamphlets, acts, and journals of the general assembly, and works of periodical literature, laws of other states and documents of the general assembly that may be added

to the library; and the librarian shall have them bound. And all the books belonging to the library, or which may be added thereto, shall be labeled in gilt letters with the words "State Library."

Rev., s. 5074; Code, s. 3614; R. C., c. 92, s. 4; 1840, c. 46, s. 6; 1842, c. 68, s. 3.

6580. Penalty for injury to books. Any person who shall damage, deface, or mutilate any book which he may be allowed to withdraw from the library, or who shall return any book so damaged, defaced, or mutilated while in his possession, shall forfeit and pay the full amount of the damage, which amount shall be determined by the librarian, but in no case to exceed double the value of the book; and the penalties and forfeitures accruing under this section shall be sued for and recovered by the librarian in the name of the state, before any justice of the peace, and shall be added to the fund for the increase of the library.

Rev., s. 5075; Code, s. 3615; R. C., c. 92, s. 5; 1842, c. 68, s. 1.

6581. Committee to purchase books. The state librarian, superintendent of public instruction, together with three other persons to be selected by the trustees, shall constitute a committee to purchase books for the state library, and they are to serve without compensation in the matter of selecting and buying books.

Rev., s. 5076; 1901, c. 503, s. 3.

6582. Librarian; election and bond. A librarian shall be elected quadrennially by the trustees of the state library, and shall give bond with security in such sum as the trustees may determine, payable to the state of North Carolina, conditioned for the safe-keeping of the books and the faithful discharge of his duties, and he shall hold his place till his successor shall be appointed and qualified.

Rev., s. 5077; Code, s. 3604; 1870-1, c. 70, s. 1; 1883, c. 216, s. 1; 1895, c. 351; 1903, c. 727.

See *Nichols v. McKee*, 68-429.

6583. Assistant librarian. The state librarian is authorized to employ an assistant in his office.

Rev., s. 5078; 1901, c. 503, s. 1.

6584. Librarian to receipt for laws of other states. The state librarian is directed to keep a record of the published laws, reports, documents, etc., received from other states and territories by exchange for like documents from this state; to receipt for the same and to distribute them to the different departments to which they belong immediately on receipt. All states and territories exchanging such documents with this state are requested to forward all documents direct to the state librarian.

Rev., s. 5079; 1889, c. 535.

6585. Separate reading-room for colored people. The state librarian is directed to fit up and maintain a separate place for the use of the colored people who may come to the library for the purpose of reading books or periodicals.

Rev., s. 5080; 1901, c. 503, s. 2.

6586. Open hours for library. The library shall be kept open during the day for such time as the trustees may prescribe; and from seven to nine o'clock each evening, if the necessary expense of keeping the same open be voluntarily paid by the citizens of the city of Raleigh.

Rev., s. 5082; Code, s. 3605; 1870-1, c. 70, s. 2; 1881, c. 352; 1889, pub. res., p. 530.

6587. Appropriation. The sum of five hundred dollars is annually appropriated for the increase of the state library.

Rev., s. 5081; Code, s. 3608; R. C., c. 92, s. 1; 1840, c. 46.

ART. 2. LAW LIBRARY

6588. Location. The law library shall occupy the rooms set apart for it in the state administration building.

Rev., s. 5083; 1885, c. 121, s. 7; 1913, c. 99, s. 1.

6589. Trustees; powers and duties. The justices of the supreme court are appointed trustees of the law library, and all moneys appropriated for its increase shall be paid out under their direction and supervision. They shall have charge of the law library and may, in their discretion, employ a librarian, who shall perform his duties under such rules and regulations as they may prescribe.

Rev., s. 5084; Code, s. 3606; 1883, c. 100, ss. 1, 2; 1889, c. 482.

6590. Open hours for library. The librarian of the law library shall keep it open during such hours as the trustees may prescribe; and he shall, upon application, admit attorneys to the library at night while they are in attendance upon the supreme court.

Rev., s. 5085; 1889, c. 482.

6591. Appropriation. The clerk of the supreme court, under the direction of the justices of that court, is authorized and directed to expend annually the amount paid in by applicants for license to practice law, who are examined by the court, in the purchase of such books as may be necessary to keep the law library well appointed; and no other appropriation shall be allowed for that purpose. He is also allowed the sum of two hundred dollars per annum for binding old books and for other contingent expenses.

Rev., s. 5086; Code, s. 3613; res., 1872-3.

ART. 3. DOCUMENT LIBRARY

6592. Location. The document library shall occupy the rooms in the capitol formerly occupied by the superintendent of public instruction and the state library.

Rev., s. 5087; 1887, c. 258, s. 1.

6593. Librarian. The librarian of the state library shall be the custodian of the document library.

Rev., s. 5088; 1887, c. 258, s. 3.

NOTE.—For trustees, see 6574.

6594. Assistant librarian. The librarian is authorized to employ an assistant in the document library during the sessions of the general assembly at a cost not exceeding one dollar per day.

Rev., s. 5089; 1891, pub. res., p. 652.

6595. Librarian to procure books. It shall be the duty of the librarian to procure two copies each of the laws and journals of the general assembly, which shall be furnished to him by the secretary of state, and to arrange them on shelves in chronological order for the use of the two houses of the general assembly respectively.

Rev., s. 5090; 1887, c. 258, s. 2.

6596. Library open, when. The librarian shall keep the document library open during the sessions of the general assembly, in order that members may have access to records, and for use of committees of either house. At all other times the doors shall be kept securely locked, but the librarian shall, upon application, admit persons who wish to examine any of the books and records therein.

Rev., s. 5091; 1891, pub. res., p. 652.

ART. 4. LIBRARY COMMISSION

6597. Commission established; members appointed. There is hereby created a library commission to be known as the Library Commission of North Carolina, which shall consist of the superintendent of public instruction, the state librarian, two other persons who shall be appointed by the North Carolina library association, and one other person who shall be appointed by the governor, all of whom shall serve without compensation. After the ninth day of March, one thousand nine hundred and nine, the governor shall appoint at once one person to serve one year and the North Carolina library association one person to serve two years and one person to serve three years; and as these terms expire, annually thereafter one person shall be appointed for three years by the governor and by the North Carolina library association, according to the vacancy to be filled. The library commission may accept resignations and fill vacancies for unexpired terms. The term of office of the members of the commission shall begin April first.

1909, c. 873, s. 1.

6598. Election of officers. The commission shall annually elect its own officers, who shall perform all the duties usually pertaining to such offices.

1909, c. 873, s. 2.

6599. Duties of commission; secretary employed. The commission shall give assistance, advice, and counsel to all libraries in the state, to all communities which may propose to establish libraries, and to all persons interested, as to the best means of establishing and administering such libraries, as to the selection of books, cataloguing, maintenance, and other details of library management as may be practicable. The commission may aid in organizing new libraries or in improving those already organized, and may establish and maintain traveling or other libraries, as may be practicable. The commission shall employ a secretary, not a member of the commission, who shall be a person trained in modern

library methods, and who shall receive such compensation as the commission may decide, and who shall perform the usual duties of a secretary and such other duties as may be assigned by the commission, and who shall serve at the will of the commission.

1909, c. 873, s. 3.

6600. Public libraries to report to commission. Every public library in the state shall make an annual report to the commission, in such form as may be prescribed by the commission. The term “public library” shall, for the purpose of this article, include free public libraries, subscription libraries, school, college, and university libraries, young men’s christian association, legal association, medical association, supreme court, and state libraries.

1909, c. 873, s. 4.

6601. Commission to report to general assembly. The commission shall make a biennial report to the governor, covering its work up to January first preceding each session of the general assembly. Five hundred copies of this report shall be published by the state printer, as other state official reports are published.

1909, c. 873, s. 5.

6602. Expenses of commission paid. No member of the commission shall ever receive any compensation for service as a member, but the actual traveling expenses of members in attendance at meetings of the commission or in visiting or establishing libraries and other incidental and necessary expenses connected with the work of the commission may be paid.

1909, c. 873, s. 6.

6603. Appropriation. There is annually appropriated out of any moneys in the state treasury, not otherwise appropriated, the sum of eight thousand dollars, to be paid to the treasurer of the commission for the use of the commission in carrying into effect the provisions of this article, and any balance not expended in any year may be used by the commission in any subsequent year.

1909, c. 873, s. 7; 1913, c. 175; 1915, c. 161; 1917, c. 221.

NOTE.—For public libraries in cities and towns, see Municipal Corporations, article 8. For public school libraries, see Education, article 30. For power of boards of county commissioners together with the county board of education to coöperate with the trustees of public libraries in cities and towns in extending library service to rural communities, see Counties and County Commissioners, sec. 1297, subsec. 42.

6604. Offices provided. The board of public buildings and grounds may allow suitable offices and equipment in the capitol, the state library, or other state buildings, for the use of the library commission.

1909, c. 873, s. 8.

CHAPTER 110

MEDICINE AND ALLIED OCCUPATIONS

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ART. 1. PRACTICE OF MEDICINE

6605. North Carolina medical society incorporated. The association of regularly graduated physicians, calling themselves the state medical society, is hereby declared to be a body politic and corporate, to be known and distinguished by the name of The Medical Society of the State of North Carolina.

Rev., s. 4491; Code, s. 3121; 1858-9, c. 258, s. 1.

6606. Board of examiners. In order to the proper regulation of the practice of medicine and surgery, there shall be established a board of regularly graduated physicians, to be known by the title of The Board of Medical Examiners of the State of North Carolina, which shall consist of seven regularly graduated physicians.

Rev., s. 4492; Code, s. 3123; 1858-9, c. 258, ss. 3, 4.

6607. Medical society appoints board. The medical society shall have power to appoint the board of medical examiners.

Rev., s. 4493; Code, s. 3126; 1858-9, c. 258, s. 9.

6608. Board elects officers and fills vacancies. The board of medical examiners are authorized to elect all such officers and to frame all such by-laws as may be necessary, and in the event of any vacancy by death, resignation, or otherwise, of any member of said board, the board, or a quorum thereof, is empowered to fill such vacancy.

Rev., s. 4494; Code, s. 3128; 1858-9, c. 258, s. 11.

6609. Meetings of board. The board of medical examiners shall assemble once in every year in the city of Raleigh, and shall remain in session from day to day until all applicants who may present themselves for examination within the first two days of this meeting have been examined and disposed of; other meetings in each year may be held at some suitable point in the state if deemed advisable.

Rev., s. 4495; 1915, c. 220, s. 1.

6610. Compensation of board. Each member of the board shall receive as a compensation for his services four dollars per day during the time the board is in session, and in addition thereto his traveling expenses to and from the places of meeting of the board by the most direct route from his place of residence, to be paid by the secretary of the board out of any moneys in his hands, upon the certificate of the president of the board of medical examiners.

Rev., s. 4496; Code, s. 3131.

6611. Bond of secretary. The secretary of the board of medical examiners shall give bond with good surety, to the president of the board, for the safe-keeping and proper payment of all moneys that may come into his hands.

Rev., s. 4497; Code, s. 3134; 1858-9, c. 258, s. 17.

6612. Officers may swear applicants. The president and secretary of the board of medical examiners of this state shall have power to administer oaths to all persons who may apply for examination before the board.

1913, c. 20, s. 7.

6613. Examination for license; scope; conditions and prerequisites. It shall be the duty of the board of medical examiners to examine for license to practice medicine or surgery, or any of the branches thereof, every applicant who complies with the following provisions: He shall, before he is admitted to examination, satisfy the board that he has an academic education equal to the entrance requirements of the university of North Carolina, or furnish a certificate from the superintendent of public instruction of the county that he has passed an exami-

nation upon his literary attainments to meet the requirements of entrance in the regular course of the state university. He shall exhibit a diploma, or furnish satisfactory proof of graduation from a medical college in good standing requiring an attendance of not less than four years and supplying such facilities for clinical and scientific instruction as shall meet the approval of the board; but the requirement of three years attendance at school shall not apply to those graduating prior to January first, nineteen hundred, and license or other satisfactory evidence of standing as a legal practitioner in another state shall be accepted in lieu of a diploma and entitle to examination.

The examination shall cover the following branches of medical science: Anatomy, physiology, surgery, pathology, medical hygiene, chemistry, pharmacy, materia medica, therapeutics, obstetrics, and the practice of medicine.

If on such examination the applicant is found competent, the board shall grant to him a license or diploma, authorizing him to practice medicine or surgery or any of the branches thereof.

Five members of the board shall constitute a quorum, and four of those present shall be agreed as to the qualification of the applicant.

Rev., s. 4498; 1913, c. 20, ss. 2, 3, 6.

Legislature has unquestioned right to require examination of applicants: *State v. Call*, 121-643.

Mandamus cannot be used to enforce issue of license (in this case to a dentist): *Ewbank v. Turner*, 134-77.

This section discussed in *State v. McKnight*, 131-723; *State v. Biggs*, 133-729; *State v. Siler*, 169-314.

6614. Two examinations, preliminary and final, allowed. It shall be the duty of the state board of medical examiners to examine any applicant for license to practice medicine on the subjects of anatomy, histology, physiology, and chemistry, upon his furnishing satisfactory evidence from a medical school in good standing and supplying such facilities for anatomical and laboratory instruction as shall meet with the approval of the board, that he has completed the course of study in the school upon the subjects mentioned. The board shall set to the credit of such applicant upon its record books the grade made by him upon the examination, which shall stand to the credit of such applicant; and when he has subsequently completed the full course in medicine and presents a diploma of graduation from a medical college in good standing, requiring a four years course of study of medicine for graduation, and when he has completed the examination upon the further branches of medicine, to wit: medical hygiene, pharmacy, materia medica, therapeutics, obstetrics, pathology, practice of medicine and surgery, he shall have accounted to his credit the grade made upon the former examination, and if then upon such completed examination he be found competent, said board shall grant him a license to practice medicine and surgery and any of the branches thereof. The applicant shall pay seven and one-half dollars for each of the two examinations herein provided for, but the whole of these sums shall be refunded to him if he fails to procure a license.

1915, c. 28.

6615. Temporary license. To prevent delay and inconvenience, two members of the board of medical examiners may grant a temporary license to any applicant who shall comply with the requirements as to graduation prescribed above, and

make report thereof to the next regular meeting of the board. Such temporary license shall not continue in force longer than the next regular meeting of the board, and shall in no case be granted after the applicant has been refused a license by the board of medical examiners. The holder of such a temporary license shall not be entitled to register as a physician and surgeon, as provided in this article, but he may practice during the time the license remains in force.

Rev., ss. 4499, 4504; Code, s. 3125; 1858-9, c. 258, s. 7; 1889, c. 181, s. 3; 1899, c. 93, s. 2.

6616. Limited license. The board may, whenever in its opinion the conditions of the locality where the applicant resides are such as to render it advisable, make such modifications of the requirements of the preceding sections, both as to application for examination and examination for license, as in its judgment the interests of the people living in that locality may demand, and may issue to such applicant a special license, to be entitled a "Limited License," authorizing the holder thereof to practice medicine and surgery within the limits only of the district specifically described therein. The holder of the limited license practicing medicine or surgery beyond the boundaries of the district as laid down in said license shall be guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars nor more than fifty dollars for each and every offense; and the board is empowered to revoke such limited license, in its discretion, after due notice. The clerk of the superior court, in registering the holder of a limited license, shall copy upon the certificate of registration and upon his record the description of the district given in the license.

1909, c. 218, s. 1.

6617. When license without examination allowed. The board of medical examiners shall in their discretion issue a license to any applicant to practice medicine and surgery in this state without examination if said applicant exhibits a diploma or satisfactory proof of graduation from a medical college in good standing, requiring an attendance of not less than four years and a license issued to him to practice medicine and surgery by the board of medical examiners of another state.

1907, c. 890; 1913, c. 20, s. 3.

6618. Board may rescind license. The board shall have the power to rescind any license granted by them when upon satisfactory proof it shall appear that any physician thus licensed has been guilty of grossly immoral conduct.

Rev., s. 4503; Code, s. 3133; 1858-9, c. 258, s. 16.

6619. License fee. The board shall have power to demand of every applicant thus licensed the sum of fifteen dollars before issuing a license or diploma, and the sum of five dollars for each temporary license, to be paid to the secretary of the board. Whenever any license is granted without examination, as authorized in this article, the applicant shall pay to the secretary of the board a fee of fifty dollars before license or diploma is issued.

Rev., s. 4501; Code, s. 3130; 1858-9, c. 258, s. 13; 1913, c. 20, ss. 4, 5.

6620. Board to keep record. The board of examiners shall keep a regular record of its proceedings in a book kept for that purpose, which shall always be open

for inspection, and shall cause to be entered in a book kept for that purpose the name of each applicant for license, and the name of each applicant licensed to practice medicine and surgery, and the time of granting the same, together with the names of the members of the board present, and shall publish the names of those licensed in two of the newspapers published in the city of Raleigh, within thirty days after the granting of the same.

Rev., s. 4500; Code, s. 3129; 1858-9, c. 258, s. 12.

6621. Blanks furnished clerk. It shall be the duty of the medical society of the state of North Carolina to prescribe proper forms of certificates required by this article, and all such blanks and forms as the clerk may need to enable him to perform his duties under this chapter.

Rev., s. 4505; 1889, c. 181, s. 7; 1899, c. 93, s. 4.

6622. Practicing without license; penalties. No person shall practice medicine or surgery, nor any of the branches thereof, nor in any case prescribe for the cure of diseases for fee or reward, unless he shall have been first licensed and registered so to do in the manner provided in this chapter, and if any person shall practice medicine or surgery without being duly licensed and registered, as provided in this chapter, he shall not be allowed to maintain any action to collect any fee for such services.

The person so practicing without license shall also be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five dollars nor more than one hundred dollars, or imprisoned, at the discretion of the court, for each and every offense: Provided, that this section shall not be construed to apply to women who pursue the vocation of a midwife: and Provided further, that this section shall not apply to any reputable physician or surgeon resident in a neighboring state coming into this state for consultation with a registered physician resident herein. But this proviso shall not apply to physicians resident in a neighboring state regularly practicing in this state: Provided, that this section shall not apply to physicians who have a diploma from a regular medical college and were practicing medicine and surgery in this state prior to the seventh day of March, one thousand eight hundred and eighty-five.

Rev., ss. 3645, 4502; Code, s. 3122; 1858-9, c. 258, s. 2; 1885, c. 117, s. 2; 1885, c. 261; 1889, c. 181, ss. 1, 2.

See generally: State v. Van Doran, 109-864; State v. Call, 121-643; State v. Welch, 129-579. Constitutional: State v. Van Doran, 109-864; State v. Call, 121-643.

Section 6623, requiring registration, does not repeal this section requiring license: State v. Call, 121-643.

Practice of obstetrics is within this section: State v. Welch, 129-579. Practice of osteopathy not within this section: State v. McKnight, 131-717—and so a “nonmedical” physician: State v. Biggs, 133-729. But see in this chapter, art. 4, Optometry; art. 5, Osteopathy; art. 6, Chiropractic.

Sufficient to charge in indictment that a person wilfully and unlawfully practiced or attempted to practice medicine or surgery: State v. Van Doran, 109-864; State v. Welch, 129-579—sufficient to allege failure to obtain license: State v. Welch, 129-579—need not charge that practicing was done for fee or reward: State v. Welch, 129-579—need not negative a proviso withdrawing a certain class from the operation of the statute: State v. Welch, 129-579.

Under acts 1889, chapter 181, section 5, making it a misdemeanor to practice medicine without first having registered and obtained a certificate, an indictment which does not charge

that defendant did not register and obtain a certificate, as required, is defective; but it need not charge that defendant does not belong to one of certain classes which are withdrawn from the operation of the statute by a proviso thereto: *State v. Call*, 121-643.

Sufficient to show under acts of 1889, ch. 181, that defendant held himself out as a physician, and not necessary to show that he practiced on any particular person: *State v. Van Doran*, 109-864.

A special verdict must find that defendant practiced for "fee or reward" to justify a conviction: *State v. Call*, 121-643; compare *State v. Welch*, 129-579.

Party holding himself out as a doctor, visiting people and prescribing his own proprietary remedy, is guilty: *State v. Van Doran*, 109-864.

That a statute, requiring examination and certificate, exempts from its requirements physicians already practicing in the state at date of its passage, does not make statute invalid as creating a monopoly or conferring special privileges, since it is only the exercise of police powers to protect public from imposters and incompetents: *State v. Call*, 121-643—nor does such statute violate the fourteenth amendment of the constitution of the United States prohibiting any state from denying to any person the equal protection of the laws, *Ibid.*

In an action to recover damages for physical injury, evidence of the amount plaintiff paid to an osteopath for services, nursing and attention reasonably given and rendered is competent to be considered by the jury, but not conclusive, even if the osteopath could not recover for such services in an action at law, or if such recovery by him were barred by the statute of limitations: *Allen v. Traction Co.*, 144-288.

In this case, contract under which the services were rendered being absolutely prohibited, was void in its inception: *Puckett v. Alexander*, 102-95.

Subject-matter of this section generally reviewed and interpreted in *State v. Biggs*, 133-729; *State v. McKnight*, 131-723.

6623. Practicing without registration; penalties. Any person desiring to engage in the practice of medicine or surgery shall personally appear before the clerk of the superior court of the county in which he resides or practices, for registration as a physician or surgeon. The person so applying shall produce and exhibit before the clerk of the superior court a license obtained from the board of medical examiners of the state, or a diploma issued by a regular medical college prior to the seventh day of March, one thousand eight hundred and eighty-five, or make oath that he was practicing medicine or surgery in this state prior to the date last mentioned. The clerk shall thereupon register the date of registration, with the name and residence of such applicant, in a book to be kept for this purpose in his office, marked "Register of Physicians and Surgeons," and shall issue to him a certificate of registration under the seal of the superior court of the county upon the form furnished him by the medical society of North Carolina, for which the clerk shall be entitled to collect from said applicant a fee of twenty-five cents. The person obtaining such certificate shall be entitled to practice medicine or surgery, or both, in the county where the same was obtained, and in any other county in this state; but if he shall remove his residence to another county he shall exhibit said certificate to the clerk of such other county and be registered, which registration shall be made by said clerk without fee or charge.

Any person who practices or attempts to practice medicine or surgery in this state without first having registered and obtained the certificate required in this section, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five dollars nor more than one hundred dollars, or be imprisoned at the discretion of the court, for each and every offense: Pro-

vided, this section shall not apply to women pursuing the vocation of midwife, nor to reputable physicians or surgeons resident in a neighboring state coming into this state for consultation with a registered physician of this state.

Rev., ss. 3646, 4504; 1889, c. 181, ss. 4, 5; 1891, c. 420.

See annotations under section 6622.

See generally: *State v. Call*, 121-643. Indictment hereunder must charge that defendant did not register and obtain a certificate as required: *State v. Call*, 121-643—need not charge that defendant practiced for fee or reward, *Ibid.*—need not charge that defendant does not belong to one of the classes protected by the proviso, *Ibid.*

6624. Clerk punishable for illegally registering physician. If any clerk of the superior court shall register, or issue a certificate to, any person practicing medicine or surgery in any other manner than that prescribed by law, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than two hundred dollars and shall be removed from office.

Rev., s. 3647; 1889, c. 181, s. 6.

6625. Certain offenses prosecuted in superior court; duties of attorney-general. In case of the violation of the criminal provisions of the last three sections preceding, the attorney-general of the state of North Carolina, upon complaint of the board of medical examiners of the state of North Carolina, shall investigate the charges preferred, and if in his judgment the law has been violated, he shall direct the solicitor of the district in which the offense was committed to institute a criminal action against the offending persons. For his services in conducting such a prosecution the solicitor shall be allowed a fee of five dollars. The board of medical examiners may also employ, at their own expense, special counsel to assist the attorney-general or the solicitor.

Exclusive original jurisdiction of all criminal actions instituted for the violations of the last three sections preceding shall be in the superior court, the provisions of any special or local act to the contrary notwithstanding.

1915, c. 220, s. 2.

ART. 2. DENTISTRY

6626. Board of examiners. The North Carolina state board of dental examiners, heretofore created for the examination of those desiring to obtain a license to engage in the practice of dentistry in this state, shall consist of six members of the North Carolina dental society, to be elected by said society at its annual meeting, who shall be commissioned by the governor and shall hold office as follows: Two for one year, two for two years, and two for three years, and until their successors are elected, commissioned, and qualified. This section shall not be so construed as to vacate the office of any member of said board as now constituted and now holding office thereon until the term of office so held shall have expired as now provided by law, and the governor shall issue his commission to such members of the board for the remainder of their terms. The board shall also have power to fill all vacancies for unexpired terms, the persons so elected to be commissioned by the governor, and they shall be responsible to the North Carolina dental society and the governor of North Carolina for their acts.

Rev., s. 4463; 1915, c. 178, s. 1.

6627. By-laws. The board of examiners shall have power to make by-laws and necessary regulations for the proper fulfillment of their duties under this article. 1915, c. 178, s. 2.

6628. Meetings; seal. The board of dental examiners shall elect one of its members president, and one secretary-treasurer, and shall have a common seal with the following inscription: "North Carolina State Board of Dental Examiners." It shall meet annually on Monday preceding the time and at the place of the meeting of the North Carolina dental society, and shall also meet, if application shall be made for examination, during the month of January following such annual meeting, at a time and place to be selected by the board, and at such other times and places as the board or any four members thereof shall agree upon, to conduct the examination of applicants and for the transaction of any other business that may come before it. Notice of such meetings shall be given by advertising for ten days in at least three newspapers published in this state.

Rev., s. 4464; 1915, c. 178, s. 3.

6629. Quorum; powers of investigation. Four members of the board shall constitute a quorum for the transaction of business, and should a quorum not be present on the day appointed for the meeting those present may adjourn from day to day until a quorum is present. The president and, in his absence, the secretary-treasurer of the board shall have power to administer oaths, issue subpoenas, and send for persons and papers in any hearing, investigation, accusation or other matter coming before the board, and the sheriffs of the several counties or other officers authorized to serve process shall serve any subpoena or other lawful order issued by the president or secretary-treasurer of the board, and shall receive for such service the fees provided by law for like service, to be paid out of any funds in the hands of the board. Any person wilfully neglecting or refusing to obey any subpoena or lawful order of the board shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned at the discretion of the court.

Rev., 4465; 1915, c. 178, s. 4.

6630. Records and transcripts. The board shall keep a record book in which shall be entered the names and proficiency of all persons to whom license may be granted under this article, the license numbers, and the date of granting of such license, and other matters of record, and the book so provided shall be deemed a book of records, and a transcript of any such entry therein, or a certificate that there is not entered therein the name, proficiency, and license number, or date of granting such license of a person charged with a violation of the provisions of this article, certified under the hands of the secretary-treasurer and the seal of the North Carolina state board of dental examiners shall be admitted as evidence in any court of this state when it is otherwise competent.

Rev., s. 4466; 1915, c. 178, s. 5.

6631. Requisites for license. No person shall engage in the practice of dentistry in this state, or attempt to do so, after the ratification of this act, without first having applied for and obtained a license for that purpose from the North Caro-

lina state board of dental examiners, and having registered such license with the clerk of the superior court of each county in which he proposes to practice dentistry. This provision applies to all persons whether they have heretofore practiced dentistry or not in this state, except such persons as have been heretofore duly licensed and registered, or who were engaged in the practice of dentistry in this state before the seventh day of March, one thousand eight hundred and seventy-nine, if on or before the twenty-fifth day of February, one thousand eight hundred and ninety, such person or persons filed verified statements with the secretary of the state board of dental examiners, showing his name, residence, date of diploma or license, or date of commencing the practice of dentistry.

Application shall be made to the board in writing for an examination in the knowledge and practice of dentistry, and for license. The applicant for examination and license must be of good moral character, at least twenty-one years of age at the time of making the application; and the application of each person must be accompanied by satisfactory evidence to the board that the applicant so applying is a person of good character, has an English education, the standard of which shall be determined by the board of dental examiners, is a graduate of and has a diploma from a reputable dental college or institution, recognized as such by the board of dental examiners, or the dental department of a reputable university so recognized by the board of dental examiners of this state. Examinations must be both written and clinical, and of such a character as to thoroughly test the qualifications of the applicant to practice dentistry, and the board may, in its discretion, refuse to grant license to any person found deficient in said examination or whom they may find guilty of cheating, deception, or fraud during such examination, or whose English education is found to be defective. The board of examiners may refuse to grant a license to any person guilty of a crime involving moral turpitude, of gross immorality, or who is addicted to the use of alcoholic liquors or narcotic drugs to such an extent as to render him unfit to practice dentistry. Any license obtained through fraud or by any false representation shall be void ab initio and of no effect.

Rev., ss. 4468, 4470; 1911, c. 137; 1915, c. 178, s. 7.

This section constitutional; must be strictly construed: *State v. Hicks*, 143-689. See, also, *State v. Call*, 121-643.

The burden of proof is upon the defendant to show he came under provision of this section, and in the absence of evidence that he practiced dentistry in the state before the specified time, or had filed the required statement, having admitted that he had not passed the requisite examination or received the certificate, a motion to quash the indictment is properly refused: *Ibid.*

Time for filing the statement to practice dentistry under this section is not of the essence of the enactment; by a present compliance therewith the defendant will be entitled to a certificate to be registered under section 6634, and thus become lawfully qualified to continue the practice of his profession: *Ibid.*

Defendant indicted for practicing without complying with section is not excused because designated officers failed to furnish him with blanks: *Ibid.*

The granting of a certificate to practice dentistry involves matters of judgment and discretion, and will not be enforced by mandamus: *Ewbank v. Turner*, 134-77.

6632. Examination and licensing of applicants. The board shall grant license to practice dentistry to all applicants who are graduates of a reputable dental institution who undergo a satisfactory examination of proficiency in the knowledge and practice of dentistry, and who receive a majority of votes of the board upon

such proficiency. No one applying for license to practice dentistry shall be denied license on account of race, color, or previous condition of servitude. The license granted shall be signed by the members of the board conducting the examination, and shall bear the seal of the North Carolina state board of dental examiners.

Rev., ss. 3642, 4467; 1915, c. 178, s. 6.

6633. Temporary or limited license. Any person wishing to engage in the practice of dentistry at any time prior to the regular meeting of the board may be examined by any one member of said board, and if competent may receive a temporary certificate, which shall be in force only until the next regular meeting, and no member of said board shall grant a temporary certificate a second time to the same person.

The board of dental examiners may grant a limited license, temporary or permanent in their discretion, to practice dentistry to any applicant of good character who has received a diploma from a reputable dental college. Such license shall authorize the applicant to practice only in a county or prescribed territory, to be fixed in the license, in which there is no dentist who has duly passed the required examination or received a certificate of proficiency at the time of such application.

Rev., s. 4467; 1913, c. 178.

6634. Registration of license; fee. Every person receiving a license to practice dentistry in this state by or from the state board of dental examiners shall, before the beginning of the practice of dentistry, cause said license to be registered in the office of the clerk of the superior court of each county in which such person desires to engage in the practice of dentistry, by appearing before such clerk and filing his license or duplicate thereof showing that he has been examined as to his proficiency in the knowledge and practice of dentistry, and has been licensed as herein provided. The clerk of the superior court is authorized to receive a registration fee of fifty cents for each registration, and shall keep a record of the same in a book provided by the county for such purpose.

Rev., 4468; 1915, c. 178, s. 8.

See annotations under section 6631.

6635. License to be displayed. The license to practice dentistry herein provided for shall at all times be displayed in a conspicuous place in the office wherein the licensee practices the profession of dentistry, and he shall, whenever requested, exhibit such license to any of the members of the state board of dental examiners or its authorized agent or attorney.

1915, c. 178, s. 9.

6636. Fees, examination and annual; pay of examiners; use of funds. In order to provide the means of carrying out and enforcing the provisions of this article the board of dental examiners shall charge and collect from each person applying for an examination for license to practice dentistry in this state an examination fee of twenty dollars, and in addition thereto a fee of one dollar for every annual certificate or license, or duplicate certificate or license, issued by the board, and out of the funds coming into the possession of the board under the provisions of

this article the members of the board shall each receive as compensation a sum not exceeding ten dollars for each day actually engaged in the duties of the office (the amount of such compensation to be fixed by the board), and all legitimate and necessary expenses incurred in attending meetings of the board. The secretary-treasurer of the board shall be allowed a reasonable salary to be fixed by the board and actual necessary expenses incurred in the discharge of the duties of his office. All expenses herein provided for shall be paid out of the funds received by the board under the provisions of this article, and no part thereof shall be paid out of the state treasury. All moneys received in excess of the per diem and allowances and other expenses herein provided shall be held by the secretary-treasurer of the board as a special fund for meeting the other legitimate expenses of the board and for such use as the board may deem necessary in the enforcement of the provisions of this article. The board by its secretary-treasurer shall make an annual report of its proceedings to the governor on or before the twenty-fifth day of February in each year showing all moneys received and disbursed by it pursuant to this act. Any sum in excess of five hundred dollars remaining after meeting the per diem and other expenses hereinbefore mentioned shall be turned into the state treasury to the use of the general school fund of the state.

Rev., 4469; 1915, c. 178, s. 10.

6637. Renewal and cancellation of license; fees. On or before the first day of January of each year every dentist engaged in the practice of dentistry in this state shall transmit to the secretary-treasurer of the North Carolina state board of dental examiners his signature and postoffice address, the number of his license, together with a fee of one dollar, and receive therefor a renewal license. Any license or certificate granted by the board, under this act, shall automatically be canceled if the holder thereof fails to secure the renewal herein provided for within a period of three months after the thirty-first day of December of each year; but any license thus canceled may be restored by the board upon the payment of five dollars if paid within one year after cancellation. Any legally practicing dentist in this state who retires from practice may receive license to resume practice upon application to the board of dental examiners for such license upon payment of ten dollars.

Rev., 4468; 1915, c. 178, s. 11.

6638. Use of false or fraudulent papers forbidden. Any person filing or attempting to file as his own a diploma or license of another, or a forged affidavit of identification or qualification, shall be deemed guilty of a crime and be punishable upon conviction thereof by imprisonment or fine or both in the discretion of the court.

1915, c. 178, s. 12.

6639. Practice of dentistry defined. Any person shall be regarded as practicing dentistry within the meaning of this article who shall diagnose or profess to diagnose, or treat or profess to treat any of the diseases or lesions of the oral cavity, teeth, gums, or maxillary bones, or shall prepare or fill cavities in human teeth, correct malposition of teeth, of jaws, or apply artificial teeth as substitutes for natural teeth, or administer anesthetics, general or local, or any other practice included in the curriculum of recognized dental institutions or colleges. Noth-

ing in this article, however, shall be so construed as to forbid regularly licensed physicians and surgeons from treating any diseases coming within the province of the practice of medicine; and nothing herein shall prevent any one from extracting teeth.

1907, c. 431; 1915, c. 178, s. 13.

A dentist is not a surgeon who can prescribe whiskey: *State v. McMinn*, 118-1259.
Definition of "dentist" or "dental surgeon" prior to this enactment, see *Ibid*.

6640. Exemption from jury duty. All duly licensed dentists of this state shall be exempt from service as jurors in any of the courts of this state.

1915, c. 178, s. 14.

6641. Record of licenses issued. All licenses and certificates issued by the state board of dental examiners shall bear a serial number, the full name of the applicant, the date of the issuance, the seal of the board, and be signed by the president and a majority of the members thereof, and be attested by its secretary.

1915, c. 178, s. 15.

6642. Practice under corporate or fictitious name forbidden. It shall be unlawful for any person to practice or offer to practice dentistry or dental surgery as herein defined under the name of any company, association, or corporation, and every person practicing or offering to practice dentistry or dental surgery under any other name than his own shall be guilty of a misdemeanor.

1915, c. 178, s. 16.

6643. Licenses of other states; reciprocal recognition. The board of dental examiners may in its discretion issue a license to practice dentistry without an examination other than clinical to a legal and ethical practitioner of dentistry who removes into North Carolina from another state or territory of the United States whose standard of requirements is equal to that of the state of North Carolina, and in which he conducted a legal or ethical practice of dentistry for at least five years next preceding his removal; but such applicant must present a certificate from the dental board or a like board of the state or territory from which he removes, certifying that he is a legally competent and ethical dentist, and is of good moral character, and such certificate must be presented to the state board of dental examiners within six months of the date of its issuance, and must be recorded in the county or counties where such person proposes to practice as is provided by this article: Provided, that the said board of such other state or territory shall permit in like manner by law the recognition of licenses or certificates issued by the North Carolina state board of dental examiners when presented to such other board by legal practitioners of dentistry from this state, when he or she wishes to remove to or practice dentistry in such other state or territory.

1915, c. 178, s. 17.

6644. Certificate for change of residence. Any person who is a legal, ethical and competent practitioner of dentistry in this state and of good moral character, and known to the North Carolina state board of dental examiners as such, who shall desire to change his or her residence to any other state or territory or foreign

country shall, upon application accompanied by a fee of five dollars to the North Carolina state board of dental examiners, receive a special certificate over the signature of the president and attested by the secretary-treasurer of the board, and bearing its seal, which shall attest the facts mentioned in this article, and give the date upon which he was presented with license.

1915, c. 178, s. 18.

6645. Fees for incoming or removing practitioners. The fee for issuing a license to a legal practitioner from another state or territory, as herein provided, shall be twenty dollars, and a fee for issuing a certificate to a legal practitioner in this state desiring to remove therefrom, as provided in the preceding section, shall be five dollars. Said fees shall be paid in cash before the license or certificate shall be issued.

1915, c. 178, s. 19.

6646. Dentists may give prescriptions. Legally licensed druggists of this state may fill prescriptions of legally licensed dentists of this state for any drug necessary for the practice of dentistry.

1915, c. 178, s. 20.

See *State v. McMinn*, 118-1259.

6647. Practicing dentistry without license forbidden. If any person shall practice or attempt to practice dentistry in this state, except extracting teeth, without having first passed the examination and obtained a license and registered the same as is herein provided, or shall violate any of the provisions of this article for which no specific penalty has been provided herein, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined twenty-five dollars for the first offense. If any person, having once been convicted of practicing dentistry contrary to this article, thereafter practices or attempts to practice dentistry as herein defined, he shall be guilty of a misdemeanor, and upon conviction thereof, for the second offense and for each succeeding offense thereafter, shall be fined and imprisoned at the discretion of the court. Each act of dentistry shall be deemed a separate offense and constitute a practice of dentistry, in the meaning of this article; and each day that a person shall hold himself out as practicing in any name except his own shall be deemed a separate offense. The opening of an office or dental parlor for the practice of dentistry, or the practice of dentistry without opening an office or parlor, or to announce to the public in any way a readiness to do any act or thing defined herein as being dentistry, shall be deemed engaging in the practice of dentistry within this article.

No person convicted under this section shall be entitled to sue for or recover any fee or charge for dental service in any court, and any sum of money paid to a person so convicted for dental services may be recovered by the person paying or his legal representative.

Rev., s. 3642; 1907, c. 431; 1915, c. 178, s. 21.

See generally: *State v. Hicks*, 143-689. Constitutional: *Ibid.*; compare *State v. Call*, 121-643. Sufficiency of indictment hereunder: *State v. Hicks*, 143-689.

Burden of proof on defendant to show that he comes under section 6631: *Ibid.* Section cited in *State v. McMinn*, 118-1261; *Ewbank v. Turner*, 134-77. Compare with case on prac-

ting medicine without license, State v. Call, 121-643, and section 6622. Osteopaths, State v. McKnight, 131-717, and section 6708. Nondrug-giving physician, State v. Biggs, 133-729, and section 6704.

6648. False claim of dental license misdemeanor. If any person shall knowingly and falsely claim or pretend to have or hold a certificate of proficiency granted by the North Carolina state board of dental examiners, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars nor less than twenty-five dollars for each offense.

Rev., s. 3643; 1887, c. 178, s. 4.

6649. Revocation of license. Whenever it shall appear to the North Carolina state board of dental examiners that any licensed dentist practicing in the state has been guilty of fraud, deceit, or misrepresentation in obtaining license, or of gross immorality; or is an habitual user of intoxicants or drugs, rendering him unfit for the practice of dentistry, or has been guilty of malpractice, or is grossly ignorant or incompetent, or is guilty of wilful negligence in the practice of dentistry, or has been employing unlicensed persons to perform work which under this article can only be legally done by persons holding a license to practice dentistry in this state; or of practicing deceit or other fraud upon the public or individual patients in obtaining or attempting to obtain practice; or of false notice, advertisement, publication, or circulation of false claims, or fraudulent misleading statements of his art, skill, or knowledge, or of his methods of treatment or practice, or shall be guilty of any offense involving moral turpitude, the board shall revoke the license of such person. An accusation may be filed with the secretary-treasurer of the board, charging any licensed dentist with the commission of any of the offenses herein enumerated, such accusation to be in writing, signed by the accuser and verified under oath.

Whenever such accusation is filed, the secretary-treasurer of the board shall set a day for hearing, and shall transmit to the accused a true copy of all papers filed with him relating to such accusation, and shall notify in writing the accused that on the day fixed for hearing, which day shall not be less than ten days from the date of such notice, he may appear and show cause, if any, why his license to practice dentistry in the state should not be revoked; and for the purpose of such hearing the board is hereby empowered to require by subpoena the attendance of witnesses, to administer oaths and hear testimony, either oral or documentary, for and against the accused.

If at such hearing of the accused the board shall be satisfied that the accused has been guilty of the offense charged in the accusation they shall thereupon, without further notice, revoke the license of the person so accused: Provided, the accused shall not be barred the right of appeal to the superior courts.

1911, c. 137; 1915, c. 178, s. 22.

ART. 3. PHARMACY

Part 1. Practice of Pharmacy

6650. North Carolina pharmaceutical association. The North Carolina pharmaceutical association, and the persons composing the same, shall continue to be a

body politic and corporate under the name and style of the North Carolina Pharmaceutical Association, and by said name have the right to sue and be sued, to plead and be impleaded, to purchase and hold real estate and grant the same, to have and to use a common seal, and to do such other things and perform such other acts as appertain to bodies corporate and politic not inconsistent with the constitution and laws of the state.

Rev., s. 4471; Code, s. 3135; 1881, c. 355, s. 1.

The selling of drugs is carefully guarded by the provisions of this article: *Thomas v. Board of Pharmacy*, 152-373.

6651. Object of pharmaceutical association. The object of the association is to unite the pharmacists and druggists of this state for mutual aid, encouragement, and improvement; to encourage scientific research, develop pharmaceutical talent, to elevate the standard of professional thought, and ultimately restrict the practice of pharmacy to properly qualified druggists and apothecaries.

Rev., s. 4472; Code, s. 3136; 1881, c. 355, s. 2.

6652. Board of pharmacy; election; terms; vacancies. The board of pharmacy shall consist of five persons licensed as pharmacists within this state, who shall be elected and commissioned by the governor as hereinafter provided. The members of the present board of pharmacy shall continue in office until the expiration of their respective terms, and the rules, regulations, and by-laws of said board, so far as they are not inconsistent with the provisions of this article, shall continue in effect. The North Carolina pharmaceutical association shall annually elect a resident pharmacist from its number to fill the vacancy annually occurring in said board, and the pharmacist so elected shall be commissioned by the governor and shall hold office for the term of five years and until his successor has been duly elected and qualified. In case of death, resignation, or removal from the state of any member of said board of pharmacy, the said board shall elect in his place a pharmacist who is a member of said North Carolina pharmaceutical association, who shall be commissioned by the governor as a member of the said board of pharmacy for the remainder of the term. It shall be the duty of a member of the board of pharmacy, within ten days after receipt of notification of his appointment and commission, to appear before the clerk of the superior court of the county in which he resides and take and subscribe an oath to properly and faithfully discharge the duties of his office according to law.

Rev., s. 4473; 1905, c. 108, ss. 5-7.

6653. Election of officers; bonds; annual meetings. The board of pharmacy shall organize by the election of a president and a secretary and treasurer, both of whom shall be members of the said board, and they shall hold their offices until their successors shall have been elected and qualified. The secretary and treasurer shall give bond in such sum as may be prescribed by the board, conditioned for the faithful discharge of the duties of his office according to law, and said bond shall be made payable to the North Carolina board of pharmacy and approved by the president of said board. The said board shall hold an annual meeting at such time and place as it may provide by rule for the examination of candidates

and for the discharge of such other business as may legally come before it, and said board may hold such additional meetings as may be necessary for the examination of candidates and for the discharge of any other business.

Rev., s. 4474; 1905, c. 108, s. 8.

6654. Powers of board; reports; quorum; records. The board of pharmacy shall have a common seal, and shall have the power and authority to define and designate nonpoisonous domestic remedies, to adopt such rules, regulations, and by-laws, not inconsistent with this article, as may be necessary for the regulation of its proceedings and for the discharge of the duties imposed under this article, and shall have power and authority to employ an attorney to conduct prosecutions and to assist in the conduct of prosecutions under this article, and for any other purposes which said board may deem necessary. The said board of pharmacy shall keep a record of its proceedings and a register of all persons to whom certificates of license as pharmacists and permits have been issued, and of all renewals thereof; and the books and register of the said board, or a copy of any part thereof, certified by the secretary, attested by the seal of said board, shall be taken and accepted as competent evidence in all the courts of the state. The said board of pharmacy shall make annually to the governor and to the North Carolina pharmaceutical association written reports of its proceedings and of its receipts and disbursements under this article, and of all persons licensed to practice as pharmacists in this state. A majority of the board shall constitute a quorum for the transaction of all business.

Rev., s. 4475; 1905, c. 108, s. 9; 1907, c. 113, s. 1.

6655. Compensation of secretary and board. The secretary of the board of pharmacy shall receive such salary as may be prescribed by the board, and shall be paid his necessary expenses while engaged in the performance of his official duties. The other members of the said board shall receive the sum of five dollars for each day actually employed in the discharge of their official duty and their necessary expenses while engaged therein: Provided, that the compensation and expenses of the secretary and members of the said board of pharmacy and all disbursements for expenses incurred by the said board in carrying into effect and executing the provisions of this article shall be paid out of the fees received by the said board.

Rev., s. 4476; 1905, c. 108, s. 10.

6656. Secretary to investigate and prosecute. Upon information that any provision of this article has been or is being violated, the secretary of the board of pharmacy shall promptly make investigations of such matters, and, upon probable cause appearing, shall file complaint and prosecute the offender. All fines and penalties prescribed in this article shall be recoverable by suit in the name of the people of the state.

Rev., s. 4477; 1905, c. 108, s. 11.

6657. Fees collectible by board. The board of pharmacy shall be entitled to charge and collect the following fees: For the examination of an applicant for license as a pharmacist, five dollars; for renewing the license as a pharmacist,

two dollars; for issuing a permit to a physician to conduct a drug store in a village of not more than five hundred inhabitants, three dollars; for the renewal of permit to a physician to conduct a drug store in a village of not more than five hundred inhabitants, two dollars. All fees shall be paid before any applicant may be admitted to examination or his name placed upon the register of pharmacists, or before any license or permit, or any renewal thereof, may be issued by the said board.

Rev., s. 4478; 1905, c. 108, s. 12.

6658. Application and examination for license; prerequisites. Every person now licensed or registered as a pharmacist under the laws of this state shall be entitled to continue in the practice of his profession until the expiration of the term for which his certificate of registration or license was issued. Every person who shall desire to be licensed as a pharmacist shall file with the secretary of the board of pharmacy an application, duly verified under oath, setting forth the name and age of the applicant, the place or places at which and the time he has spent in the study of the science and art of pharmacy, the experience in the compounding of physicians' prescriptions which the applicant has had under the direction of a legally licensed pharmacist, and such applicant shall appear at a time and place designated by the board of pharmacy and submit to an examination as to his qualifications for registration as a licensed pharmacist. The application referred to above shall be prepared and furnished by the board of pharmacy.

In order to become licensed as a pharmacist, within the meaning of this article, an applicant shall be not less than twenty-one years of age, he shall present to the board of pharmacy satisfactory evidence that he has had four years of experience in pharmacy under the instruction of a licensed pharmacist, and that he has attended a reputable school or college of pharmacy or medicine for not less than nine months, and he shall also pass a satisfactory examination of the board of pharmacy: Provided, that the actual time of attendance at a reputable school or college of pharmacy, not to exceed two years, may be deducted from the time of experience required.

Rev., ss. 4479, 4480; 1905, c. 108, s. 13; 1915, c. 165.

Section cited in *Thomas v. Board of Pharmacy*, 152-373. See *State v. Hicks*, 143-689; *State v. Call*, 121-643, and many others on constitutional powers of legislature as to such matters.

6659. When license issued. If an applicant for license as a pharmacist has complied with all the requirements of the two preceding sections, the board of pharmacy shall enroll his name upon the register of pharmacists and issue to him a license which shall entitle him to practice as a pharmacist up to the first day of September next ensuing, as provided in this article for the annual renewal of every registration.

Rev., s. 4481; 1905, c. 108, s. 15.

6660. When license without examination issued. The board of pharmacy may issue license to practice as pharmacists in this state, without examination, to such persons as have been legally registered or licensed as pharmacists by other boards of pharmacy, if the applicant for such license shall present satisfactory evidence of the same qualifications as are required from licentiates in this state, and that

he was registered or licensed by examination by such other board of pharmacy, and that the standard of competence required by such board of pharmacy is not lower than that required in this state. All applicants for license under this section shall, with their application, forward to the secretary of the board of pharmacy the same fees as are required of other candidates for license.

Rev., s. 4482; 1905, c. 108, s. 16.

6661. When license refused or revoked; fraud. The board of pharmacy may refuse to grant a license to any person guilty of felony or gross immorality, or who is addicted to the use of alcoholic liquors or narcotic drugs to such an extent as to render him unfit to practice pharmacy; and the board of pharmacy may, after due notice and hearing, revoke a license for like cause, or any license which has been procured by fraud, and any license or permit, or renewal thereof, obtained through fraud or by any fraudulent or false representations shall be void and of no effect in law.

Rev., s. 4483; 1905, c. 108, ss. 17, 25.

Board may refuse to grant license or renewal to one convicted of violating the law as to sale of drugs: *Thomas v. Board of Pharmacy*, 152-373.

6662. Expiration and renewal of license; failure to renew misdemeanor. Every licensed pharmacist who desires to continue in the practice of his profession, and every physician holding a permit to sell drugs in a village of not more than five hundred inhabitants, shall, within thirty days next preceding the expiration of his license or permit, file with the secretary and treasurer of the board of pharmacy an application for the renewal thereof, which application shall be accompanied by the fee hereinbefore prescribed. If the board of pharmacy shall find that an applicant has been legally licensed in this state, and is entitled to a renewal thereof, or to a renewal of a permit, it shall issue to him a certificate attesting that fact. And if any pharmacist shall fail, for a period of sixty days after the expiration of his license, to make application to the board for its renewal, his name shall be erased from the register of licensed pharmacists, and such person, in order to again become registered as a licensed pharmacist, shall be required to pay the same fee as in the case of original registration. And if any holder of a permit to sell drugs in a village of not more than five hundred inhabitants shall fail, for a period of sixty days after the expiration of his permit, to make application for the renewal thereof, his name shall be erased from the register of persons holding such permits, and he may be restored thereto only upon the payment of the fee required for the granting of original permit. The registration of every license and every permit issued by the board shall expire on the thirty-first day of August next ensuing the granting thereof: Provided, that the board of pharmacy, in its discretion, shall have the power to issue a license or permit, or renewals thereof, to any person whose license or permit has been revoked by operation of law or by the board of pharmacy, or whose renewal thereof has been refused by the board of pharmacy, after the expiration of one year from the date of such revocation of license or permit, or refusal of a renewal thereof, upon satisfactory proof that such person is entitled to such license or permit, or to a renewal thereof.

Every holder of a license or permit as a pharmacist, who after the expiration thereof continues to carry on the business for which the license or permit was

granted, without renewing the same as required by this section, shall be guilty of a misdemeanor, and fined not less than five nor more than twenty-five dollars.

Rev., ss. 3653, 4484; 1905, c. 108, ss. 18, 19, 27; 1911, c. 48.

Mandamus will not lie to compel the board of pharmacy to renew license revoked for violation of pharmacy law (even if power existed prior to act of 1911): *Thomas v. Board of Pharmacy*, 152-373. As to indictment, see *State v. Neal*, 133-689.

6663. License to be displayed; penalty. Every certificate or license to practice as a pharmacist, and every permit to a practicing physician to conduct a pharmacy or drug store in a village of not more than five hundred inhabitants, and every last renewal of such license or permit, shall be conspicuously exposed in the pharmacy or drug store or place of business of which the pharmacist, or other person to whom it is issued, is the owner or manager, or in which he is employed.

The holder of such license, permit, or renewal who fails to expose it as required by this section shall be guilty of a misdemeanor, and fined not less than five nor more than twenty-five dollars, and each day that such license, permit, or renewal thereof shall not be exposed shall be held to constitute a separate and distinct offense.

Rev., ss. 3651, 4485; 1905, c. 108, ss. 18, 26.

See *State v. Neal*, 133-689.

6664. Unlicensed person not to use title of pharmacist; penalty. It shall be unlawful for any person not legally licensed as a pharmacist to take, use or exhibit the title of pharmacist or licensed or registered pharmacist, or the title druggist or apothecary, or any other title, name, or description of like import.

Every person who violates this section shall be guilty of a misdemeanor and be fined not less than twenty-five nor more than one hundred dollars.

Rev., ss. 3652, 4486; 1905, c. 108, ss. 22, 29.

See *State v. Neal*, 133-689.

6665. Purity of drugs protected; seller responsible; adulteration misdemeanor. Every person who shall engage in the sale of drugs, chemicals, and medicines shall be held responsible for the quality of all drugs, chemicals, and medicines he may sell or dispense, with the exception of those sold in the original packages of the manufacturers, and also those known as "patent or proprietary medicines."

If any person engaged in the sale of drugs, chemicals, and medicines shall intentionally adulterate, or cause to be adulterated, or exposed to sale knowing the same to be adulterated, any drugs, chemicals, or medical preparations, he shall be guilty of a misdemeanor and liable to a fine not exceeding one hundred dollars, and if he is a licensed pharmacist his name shall be stricken from the register of licensed pharmacists.

Rev., ss. 3648, 4488; Code, s. 3145; 1881, c. 355, s. 11; 1897, c. 182, s. 7; 1905, c. 108, s. 3.

Section cited in *State v. Monroe*, 121-677. For regulations as to pure foods and drugs, see sections 4750-4768.

6666. Prescriptions preserved; copies furnished. Every proprietor or manager of a drug store or pharmacy shall keep in his place of business a suitable book or file, in which shall be preserved for a period of not less than five years the original of every prescription compounded or dispensed at such drug store or pharmacy. Upon the request of the prescribing physician, or of the person for whom such

prescription was compounded or dispensed, the proprietor or manager of such drug store or pharmacy shall furnish a true and correct copy of such prescription, and said book or file of original prescriptions shall at all times be open to the inspection and examination of duly authorized officers of the law or other persons authorized and directed by the board of pharmacy to make such inspection and examination.

Rev., s. 4490; 1905, c. 108, s. 21.

6667. Selling drugs without license prohibited; drug trade regulated. It shall be unlawful for any person not licensed as a pharmacist within the meaning of this article to conduct or manage any pharmacy, drug or chemical store, apothecary shop or other place of business for the retailing, compounding, or dispensing of any drugs, chemicals, or poison, or for the compounding of physicians' prescriptions, or to keep exposed for sale at retail any drugs, chemicals, or poison, except as hereinafter provided, or for any person not licensed as a pharmacist within the meaning of this article to compound, dispense, or sell at retail any drug, chemical, poison, or pharmaceutical preparation upon the prescription of a physician or otherwise, or to compound physicians' prescriptions except as an aid to and under the immediate supervision of a person licensed as a pharmacist under this article. And it shall be unlawful for any owner or manager of a pharmacy or drug store or other place of business to cause or permit any other than a person licensed as a pharmacist to compound, dispense, or sell at retail any drug, medicine, or poison except as an aid to and under the immediate supervision of a person licensed as a pharmacist.

Nothing in this section shall be construed to interfere with any legally registered practitioner of medicine in the compounding of his own prescriptions, nor with the exclusively wholesale business of any dealer who shall be licensed as a pharmacist or who shall keep in his employ at least one person who is licensed as a pharmacist, nor with the selling at retail of nonpoisonous domestic remedies, nor with the sale of patent or proprietary preparations which do not contain poisonous ingredients, nor with the sale of poisonous substances which are sold exclusively for use in the arts or for use as insecticides when such substances are sold in unbroken packages bearing a label having plainly printed upon it the name of the contents, the word "Poison," the vignette of the skull and crossbones, and the name of at least two readily obtainable antidotes.

In any village of not more than five hundred inhabitants the board of pharmacy may grant any legally registered practicing physician a permit to conduct a drug store or pharmacy in such village, which permit shall not be valid in any other village than the one for which it was granted, and shall cease and terminate when the population of the village for which such permit was granted shall become greater than five hundred: Provided, that the board of pharmacy may, after due investigation, grant to any legally registered practicing physician in towns or villages of more than five hundred, and not exceeding six hundred, inhabitants a permit to conduct a drug store or pharmacy in such towns or villages subject to the provisions of this article.

Rev., s. 4487; 1905, c. 108, s. 4.

6668. Compounding prescriptions without license. If any person, not being licensed as a pharmacist, shall compound, dispense, or sell at retail any drug,

medicine, poison, or pharmaceutical preparation, either upon a physician's prescription or otherwise, and any person being the owner or manager of a drug store, pharmacy, or other place of business, who shall cause or permit any one not licensed as a pharmacist to dispense, sell at retail, or compound any drug, medicine, poison, or physician's prescription contrary to the provisions of this article, he shall be deemed guilty of a misdemeanor, and fined not less than twenty-five nor more than one hundred dollars.

Rev., s. 3649; 1905, c. 108, s. 24.

Liability of proprietor when clerk acts against his orders: *State v. Neal*, 133-689.

6669. Conducting pharmacy without license. If any person, not being licensed as a pharmacist, shall conduct or manage any drug store, pharmacy, or other place of business for the compounding, dispensing, or sale at retail of any drugs, medicines, or poisons, or for the compounding of physicians' prescriptions contrary to the provisions of this article, he shall be deemed guilty of a misdemeanor, and be fined not less than twenty-five nor more than one hundred dollars, and each week such drug store or pharmacy or other place of business is so unlawfully conducted shall be held to constitute a separate and distinct offense.

Rev., s. 3650; 1905, c. 108, s. 23.

See *State v. Neal*, 133-689.

6670. Pharmacist obtaining license fraudulently. If any person shall make any fraudulent or false representations for the purpose of procuring a license or permit, or renewal thereof, either for himself or for another, he shall be guilty of a misdemeanor, and fined not less than twenty-five nor more than one hundred dollars; and if any person shall wilfully make a false affidavit or any other false or fraudulent representation for the purpose of procuring a license or permit, or renewal thereof, either for himself or for another, he shall be deemed guilty of perjury, and upon conviction thereof shall be subject to like punishment as is now prescribed for the crime of perjury.

Rev., s. 3654; 1905, c. 108, s. 25.

Part 2. Dealing in Specific Drugs Regulated

6671. Poisons; sales regulated; label; penalties. It shall be unlawful for any persons to sell or deliver to any person any of the following described substances or any poisonous compound, combination, or preparation thereof, to wit: The compounds and salts of arsenic, antimony, lead, mercury, silver and zinc, oxalic and hydrocyanic acids and their salts, the concentrated mineral acids, carbolic acid, the essential oils of almonds, pennyroyal, tansy and savine, croton oil, creosote, chloroform, chloral hydrate, cantharides, or any aconite, belladonna, bitter almonds, colchicum, cotton root, conium, cannabis indica, digitalis, hyoscyamus, nux vomica, opium, ergot, cannabis stramonius, or any of the poisonous alkaloids or alkaloidal salts or other poisonous principles derived from the foregoing, or cocaine or any other poisonous alkaloids or their salts, or any other virulent poisons, except in the manner following: It shall first be learned by due inquiry that the person to whom delivery is made is aware of the poisonous character of the substance, and that it is desired for a lawful purpose, and the

box, bottle, or other package shall be plainly labeled with the name of the substance, the word "Poison," and the name of the person or firm dispensing the substance.

Before a delivery is made of any of the following substances, to wit, the compounds and salts of arsenic, antimony and mercury, hydrocyanic acid and its salts, strychnine and its salts, and the essential oil of bitter almonds, there shall be recorded in a book kept for the purpose the name of the article, the quantity delivered, the purpose for which it is required as represented by the purchaser, the date of delivery, the name and address of the purchaser, the name of the dispenser, which book shall be preserved for at least five years and shall at all times be open to the inspection of the proper officers of the law: Provided, that the foregoing provision shall not apply to articles dispensed upon the order of persons believed by the dispenser to be lawfully authorized practitioners of medicine or dentistry: Provided, also, that the record of sale and delivery above mentioned shall not be required of manufacturers and wholesalers who shall sell any of the foregoing substances at wholesale; but the box, bottle, or other package containing such substances, when sold at wholesale, shall be properly labeled with the name of the substance, the word "Poison," and the name and address of the manufacturer or wholesaler: Provided further, that it shall not be necessary to place a poison label upon, or to record the delivery of, the sulphide of antimony or the dioxide or carbonate of zinc or lead, or of colors ground in oil and intended for use as paint, or paris green, when dispensed in the original package of the manufacturer or wholesaler, or calomel, paregoric, or other preparations of opium containing less than two grains of opium to the fluid ounce, nor in the case of preparations containing any of the substances named in this section when in a single box, bottle, or other package, or when the bulk of two fluid ounces or the weight of two avoirdupois ounces does not contain more than an adult medicinal dose of such poisonous substance.

If any person shall sell or deliver to any person any poisonous substance specified in this section without labeling the same and recording the delivery thereof in the manner prescribed, he shall be guilty of a misdemeanor, and fined not less than twenty-five nor more than one hundred dollars.

Rev., ss. 3655, 4489; 1905, c. 108, ss. 20, 28.

6672. Narcotics and certain other drugs; sales regulated. 1. *Dispensing without prescription forbidden.* It shall be unlawful for any person, firm, or corporation to sell, furnish, or give away any cocaine, alpha or beta eucaine, novocaine, opium, morphine, heroin, codine, or any salt or compound of any of the foregoing substances, or any preparation or compound containing any of the foregoing substances, or their salts or compounds, in greater quantity than is prescribed in the United States Pharmacopœia, except upon the original written order or prescription of a lawfully licensed practitioner of medicine, dentistry, or veterinary medicine, which order or prescription shall be dated, and shall contain the name of the person for whom prescribed, or, if ordered by a practitioner of veterinary medicine, shall state the kind of animal for which ordered, and shall be signed by the person giving the order or prescription.

2. *Limitation as to form of preparation and amount dispensed.* In no case shall any person, firm, or corporation fill any prescription or order for cocaine,

alpha or beta eucaine, novocaine, opium, morphine, heroin, codine, or any salt or compound of any of the foregoing substances, or any preparation or compound containing any of the foregoing substances, or their salts or compounds, in flake or crystals, but only in a solution, or ointment, which shall not contain over four per cent of the above named substances, or any of them, and no such order or prescription shall be for a greater quantity than one ounce of any such solution or ointment sold and dispensed in one-ounce bottles.

3. *Prescription retained; duplicates.* Such written order or prescription shall be permanently retained on file by the person, firm, or corporation who shall compound or dispense the article ordered or prescribed, and it shall not be again compounded or dispensed, except upon the written order of the original prescriber for each and every subsequent compounding or dispensing. No copy or duplicate of such written order or prescription shall be made or delivered to any person, but the original shall at all times be open to inspection by the prescriber and properly authorized officers of the law.

4. *When section inapplicable.* The above provisions shall not apply to preparations containing opium, or its derivatives, and recommended and sold in good faith for diarrhœa, cholera, or coughs, each bottle or package of which is accompanied by specific directions for use, and a caution against habitual use; nor to the compound powder of ipecac and opium, commonly known as "Dover's powders"; and the above provisions shall not apply to sales at wholesale by jobbers, wholesalers, and manufacturers to retail druggists or qualified physicians, or to each other, nor to sales at retail by retail druggists to regular practitioners of medicine, dentistry, or veterinary medicine, nor to sales made to manufacturers of proprietary or pharmaceutical preparations, for use in the manufacture of such preparations, nor to sales to hospitals, colleges, or scientific institutions.

P. L. 1913, c. 761, s. 1; 1919, c. 288.

Sufficient evidence in indictment for sale of cocaine: *State v. Burno*, 158-632.

6673. Limitations on sales of certain drugs to practitioners. It shall be unlawful for any person, firm, or corporation to sell, furnish, or dispense to any regular practitioner of medicine, dentistry, or veterinary medicine more than one dram of cocaine, alpha or beta eucaine, novocaine, or any salt or compound of any of the foregoing substances, or their salts or compounds, at one time; or more than one-half ounce of opium, morphine, heroin, codine, or any salt or compound of any of the said substances, or their salts or compounds, at one time.

P. L. 1913, c. 761, s. 2; 1919, c. 288.

6674. Limitations on possession of certain drugs by retail druggists. It shall be unlawful for any person, firm, or corporation doing a retail drug business to have more than one ounce of cocaine, alpha or beta eucaine, novocaine, or any salt or compound of any of the foregoing substances, or their salts or compounds, or more than one and one-half ounces of opium, morphine, heroin, codine, or any salt or compound of any of them, or their salts or compounds, in his or its possession at any one time.

P. L. 1913, c. 761, s. 3; 1919, c. 288.

6675. Limitations on possession of certain drugs by practitioners; records to be kept. It shall be unlawful for any practitioner of medicine, dentist, or veterinarian to have or keep in his possession at any time more than one dram of cocaine, alpha or beta eucaine, novocaine, or any salt or compound of any of the foregoing substances, or their salts or compounds, or more than one-half ounce of opium, morphine, heroin, codine, or any salt or compound of any of them, or their salts or compounds, and each practitioner of medicine, dentist, and veterinarian shall keep a complete record of all purchases, the date and amount of each purchase, and the name of the person or party from whom each purchase was made, and a complete record of any disposition of said drugs, or any of them, and said record shall be open at all times to the inspection of the legally authorized officers of the law.

P. L. 1913, c. 761, s. 4; 1919, c. 288.

6676. Presumptive evidence of illegal sale. It shall be presumptive evidence of an illegal sale if the amount shown by the amount on hand, plus the amount legally dispensed, does not tally with the amount shown to have been purchased by the retail druggist, practitioner of medicine, dentist, or veterinarian.

P. L. 1913, c. 761, s. 5; 1919, c. 288.

6677. Prescriptions of certain drugs regulated. It shall be unlawful for any practitioner of medicine, dentistry, or veterinary medicine to furnish or to prescribe for the use of any habitual user of the same any cocaine, alpha or beta eucaine, novocaine, opium, morphine, heroin, codine, or any salt or compound of any of the foregoing substances, or their salts or compounds; and it shall also be unlawful for any practitioner of dentistry to prescribe any of the foregoing substances for any person not under his treatment in the regular practice of his profession, or for any practitioner of veterinary medicine to prescribe any of the foregoing substances for the use of any human being. The provisions of this section shall not be construed to prevent any lawfully authorized practitioner of medicine from furnishing or prescribing in good faith for the use of any habitual user of narcotic drugs, who is under his professional care, such substances as he may deem necessary for his treatment, when such prescriptions are not given or substances furnished for the purpose of evading the provisions of this article.

P. L. 1913, c. 761, s. 6; 1919, c. 288.

Action by husband for sale of laudanum to wife: *Holloman v. Harward*, 119-150.

6678. Limitations on sales of certain drugs by wholesalers; records to be kept. It shall be unlawful for any jobber, wholesaler, or manufacturer to sell or furnish to any retail druggist cocaine, alpha or beta eucaine, novocaine, or any salt or compound of any of the foregoing substances, or their salts or compounds, in greater quantity than one ounce, at one time, or to likewise sell or furnish opium, morphine, heroin, codine, or any salt or compound of any of them, or their salts or compounds, in greater quantity than one and one-half ounces at one time; and it shall be unlawful for any jobber, wholesaler, or manufacturer to sell or furnish to any practitioner of medicine, dentistry, or veterinary medicine, cocaine, alpha or beta eucaine, novocaine, or any salt or compound of any of the foregoing substances, or their salts or compounds, in

greater quantity than one dram, at one time, or to likewise sell or furnish opium, morphine, heroin, codine, or any salt or compound of any of them, or their salts or compounds, in greater quantity than one-half ounce at one time; and every package sold or furnished by any jobber, wholesaler, or manufacturer shall bear a serial number, stamped upon the outside wrapper or cover; and all jobbers, wholesalers, and manufacturers shall keep a complete record of every sale made by them, showing the name of the buyer, his place of business, the date of sale, the kind of drug sold, and if a salt or compound, the percentage of any substance therein enumerated, the amount sold, the serial number of each package, and the name of the clerk or employer by whom each order was filled, and these records shall be open at all times to the inspection of the legally authorized officers of the law.

P. L. 1913, c. 761, s. 7; 1919, c. 288.

6679. Possession of certain drugs forbidden; exceptions. It shall be unlawful for any person, firm, or corporation, other than those enumerated in this article, and also those into whose hands possession may come in enforcing or attempting to enforce the provisions of this article, to have in his or their possession any cocaine, alpha or beta eucaine, novocaine, opium, morphine, heroin, codine, or any salt or compound of the foregoing substances, or their salts or compounds.

P. L. 1913, c. 761, s. 8; 1919, c. 288.

What is sufficient possession to constitute violation: *State v. Ross*, 168-130.

6680. Process for securing evidence. Upon affidavit being made that there is reason to believe that the provisions of this article are being violated at any place, or by any person, those officers or persons authorized to issue process are authorized to issue to any lawful officer of the city or county where such place or person may be a subpoena *capias ad testificandum*, or summons in writing, commanding any person who may have information concerning such violation of the law to appear and give evidence upon oath concerning the same in accordance with the provisions of the section under chapter on evidence whereby magistrates are authorized to compel testimony in investigations covering sales of liquor and keeping gaming tables.

P. L. 1913, c. 761, s. 9; 1919, c. 288.

6681. Testimony enforced; immunity. No person shall be excused from testifying in any prosecution for violation of the provisions of this article relating to narcotics, cocaine, alpha or beta eucaine, or novocaine, or any investigation concerning the violating of any law prohibiting the sale, dispensing, or possession of any of these substances, mixtures, or compounds as enumerated in this article, or any other law of the state concerning the same; but no discovery made by such person shall be used against him in any penal or criminal prosecution, and he shall be altogether pardoned for the offense done or participated in by him.

P. L. 1913, c. 761, s. 10; 1919, c. 288.

6682. Search warrants; seizure and retention of drugs. If any credible witness shall make oath before any person authorized to issue process as herein-

before provided in the second preceding section, that there is a reasonable cause to suspect that any provision of this article is being violated, or any other act prohibiting the sale, dispensing, or possession of the substances, mixtures, or compounds enumerated herein, it shall be the duty of such officer or person to grant a warrant, to be executed within the limits of the county in which such violation is alleged to have occurred, or to be occurring, to any lawful officer, authorizing him to search the place where, or the person by whom, it is alleged (in such affidavit) this law has been or is being violated, and to seize and preserve any evidence of the violation of this article, to be used in the trial of any person arrested by reason of the examination, search, or seizure herein provided. All cocaine, alpha or beta eucaine, novocaine, opium, morphine, heroin, codine, or any mixture of either, or any salt or compound of any of the foregoing substances, or any preparation or compound containing any of the foregoing substances, or their salts or compounds, seized under this article, shall be held, and upon acquittal of the person so charged shall be returned to him, and upon conviction shall be destroyed.

P. L. 1913, c. 761, s. 11; 1919, c. 288.

6683. Narcotics and certain other drugs; violation of law a misdemeanor. Any person who shall violate any of the provisions of this article relating to the prescription, sale or possession of any cocaine, alpha or beta eucaine, novocaine, opium, morphine, heroin, their salts or compounds, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined or imprisoned in the discretion of the court; and if a licensed pharmacist, physician, dentist or veterinary surgeon, his license shall be revoked. It shall be the duty of all judges of the superior courts in this state, at every regular term thereof, to charge all regularly impaneled grand juries to diligently inquire into and investigate all cases of the violation of such provisions of this article and to make a true presentment of all persons guilty of such violations. It shall be the duty of the board of pharmacy to cause the prosecution of all persons violating such provisions of this article. No prosecution shall be brought for the sale of any patent or proprietary medicine containing any of the drugs or preparations hereinbefore mentioned until the board of pharmacy shall certify that such medicine contains any of the said drugs or preparations in excess of the maximum percentage hereinbefore mentioned. In any proceedings under the provisions of this article the charge may be brought against any or all of the members of a partnership, or against the directors or executive officers of a corporation, or against the agent or employee of any person, partnership or corporation.

1907, c. 77, ss. 3, 4; 1909, c. 713, s. 2; P. L. 1913, c. 761, s. 33; 1919, c. 288.

6684. Certain patent cures and devices; sale and advertising forbidden. It shall be unlawful for any person, firm, association, or corporation in the state, or any agent thereof, to sell or offer for sale any proprietary or patent medicine or remedy purporting to cure cancer, consumption, diabetes, paralysis, Bright's disease, or any other disease for which no cure has been found, or any mechanical device whose claims for the cure or treatment of disease are false or fraudulent; and that it shall be unlawful for any person, firm, association, or corporation in the state, or any agent thereof, to publish in any manner, or by any means, or

cause to be published, circulated, or in any way placed before the public any advertisement in a newspaper or other publication or in the form of books, pamphlets, handbills, circulars, either printed or written, or by any drawing, map, print, tag, or by any other means whatsoever, any advertisement of any kind or description offering for sale or commending to the public any proprietary or patent medicine or remedy purporting to cure cancer, consumption, diabetes, paralysis, Bright's disease, or any other disease for which no cure has been found, or any mechanical device for the treatment of disease, when the North Carolina board of health shall declare that such device is without value in the treatment of disease.

Any person, firm, association, or corporation violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding one hundred dollars for each offense. Each sale, offer for sale, or publication of any advertisement for sale of any of the medicines, remedies, or devices mentioned in this section shall constitute a separate offense.

1917, c. 27, ss. 1, 2, 3.

6685. Certain patent cures and devices; enforcement of law. To provide for the efficient enforcement of the preceding section, the same shall be under the supervision and management of the North Carolina board of pharmacy, and it shall be the duty of all registered pharmacists to report immediately any violations thereof to the secretary of the board of pharmacy, and any wilful failure to make such report shall have the effect of revoking his license to practice pharmacy in this state.

1917, c. 27, ss. 4, 5.

6686. Department of agriculture to analyze patent medicines. The chemists and other experts of the department of agriculture shall, under such rules and regulations as may be prescribed by the board of pharmacy, and upon request of the secretary of said board, make an analytical examination of all samples of drugs, preparations, and compounds sold or offered for sale in violation of the two preceding sections.

1917, c. 27, s. 6.

ART. 4. OPTOMETRY

6687. Optometry defined. The practice of optometry is hereby defined to be the employment of any means, other than the use of drugs, medicine, or surgery, for the measurement of the powers of vision and the adaptation of lenses for the aid thereof.

1909, c. 444, s. 1.

6688. Practice without registration unlawful. After the passage of this article it shall be unlawful for any person to practice optometry in the state unless he has first obtained a certificate of registration and filed the same, or a certified copy thereof, with the clerk of the superior court of his residence, as hereinafter provided.

1909, c. 444, s. 2.

6689. Board of examiners in optometry. There is hereby created a board, whose duty it shall be to carry out the purposes and enforce the provisions of this

article, and which shall be styled the "North Carolina State Board of Examiners in Optometry." This board shall be appointed by the governor as soon as practicable, and shall consist of five regular optometrists who are members of the North Carolina state optometric society and who have been engaged in the practice of optometry in the state for five years. The terms of the members shall be as follows: One for one year, one for two years, one for three years, one for four years, one for five years. The terms of members thereafter appointed shall be for five years. The appointments to fill vacancies shall be for the unexpired terms. The members of the board, before entering upon their duties, shall respectively take all oaths taken and prescribed for other state officers, in the manner provided by law, which shall be filed in the office of the secretary of state, and the board shall have a common seal.

1909, c. 444, s. 3; 1915, c. 21, s. 1.

6690. Organization; meetings and powers thereat; records. The board of examiners shall choose, at the first regular meeting and annually thereafter, one of its members as president and one as secretary and treasurer. The board shall make such rules and regulations, not inconsistent with law, as may be necessary to the proper performance of its duties, and each member may administer oaths and take testimony concerning any matter within the jurisdiction of the board. A majority of the board shall constitute a quorum. The board shall meet at least twice a year, the times and places of meeting to be designated by the president and secretary. The secretary of the board shall keep a full record of its proceedings, which shall at all reasonable times be open to public inspection.

1909, c. 444, s. 4.

6691. Examination for practice; prerequisites; registration. Every person, before beginning to practice optometry in this state after the passage of this article, shall pass an examination before the board of examiners. The examination shall be confined to such knowledge as is essential to the practice of optometry. Every applicant for examination at the time of examination must comply with the following conditions:

1. He must be twenty-one years of age.
2. He shall file with the secretary of the board a certificate of good moral character, signed by two reputable citizens of this state; but an applicant from another state may have such certificate signed by any state officer of the state from which he comes.
3. He shall satisfy the board that he is a graduate of a high school, or that his literary attainments are equivalent to that of a high school education, and that he has been in actual attendance at some recognized optical college for a period of not less than two years, or that he has had two years of continuous optometrical practice under a registered optometrist, or by reason of a registered certificate of any state.

4. He must pay to the board for the use of the board the sum of ten dollars, and if he shall successfully pass the examination he shall pay to the secretary for the use of the board a further sum of five dollars on the issuance to him of the certificate.

Any candidate presenting himself for examination and failing to successfully pass the board shall have returned to him the ten dollars fee required in this

section. Every person successfully passing the examination shall be registered in the board registry, which shall be kept by the secretary, as licensed to practice optometry, and he shall also receive a certificate of registration, to be signed by the president and secretary of the board.

1909, c. 444, s. 5; 1915, c. 21, ss. 2, 3, 4.

Section cited in *Vineberg v. Day*, 152-355.

6692. Persons in practice before passage of statute. Every person who had been engaged in the practice of optometry in the state for two years prior to the date of the passage of this article shall hereafter file an affidavit as proof thereof with the board. The secretary shall keep a record of such persons who shall be exempt from the provisions of the preceding section. Upon payment of three dollars he shall issue to each of them certificates of registration without the necessity of an examination. Failure on the part of a person so entitled within six months of the enactment of this article to make written application to the board for the certificate of registration accompanied by a written statement, signed by him and duly verified before an officer authorized to administer oaths within this state, fully setting forth the grounds upon which he claims such certificate, shall be deemed a waiver of his right to a certificate under the provisions of this section. A person who has thus waived his right may obtain a certificate thereafter by successfully passing examination and paying a fee as provided herein.

1909, c. 444, ss. 6, 7, 9.

The board has authority to pass upon the proof offered under this section: *Vineberg v. Day*, 152-355. This section applies only to residents of the state: *Ibid*.

6693. Filing of certificate by licensee; fees; failure to file, certified copies. Each recipient of the certificate of registration shall present the same for record to the clerk of the superior court of the county in which he resides, and shall pay a fee of fifty cents for recording the same. The clerk shall record it in a book to be provided by him for that purpose. Any person so licensed, before engaging in the practice of optometry in any other county, shall file the certificate for record with the clerk of the superior court of the county in which he desires to practice, and pay the clerk for recording it a fee of fifty cents. Any failure, neglect, or refusal on the part of a person holding a certificate to file it for record, for thirty days after the issuance thereof, shall forfeit the certificate and it shall become null and void. Upon the request of any person entitled to a certificate of registration the board shall issue a certified copy thereof, and upon the fact of the loss of the original being made to appear, the certified copy shall be recorded in lieu of the original, and the board shall be entitled to a fee of one dollar for recording such certified copy.

1909, c. 444, s. 8.

See *Vineberg v. Day*, 152-355.

6694. Certificate to be displayed at office. Every person to whom a certificate of examination or registration is granted shall display the same in a conspicuous part of his office wherein the practice of optometry is conducted.

1909, c. 444, s. 10.

6695. Compensation of board; surplus funds. Out of the funds coming into possession of said board each member thereof may receive as compensation the sum

of five dollars for each day he is actually engaged in the duties of his office and mileage of three cents per mile for all distances necessarily traveled in going to and coming from the meetings of the board. Such expenses shall be paid from the fees and assessments received by the board under the provisions of this article, and no part of the salary or other expenses of the board shall ever be paid out of the state treasury. All moneys received in excess of per diem allowance and mileage, as above provided, shall be held by the secretary as a special fund for meeting expenses of the board and carrying out the provisions of this article, and he shall give the state such bond as the board shall from time to time direct for the faithful performance of his duties, and the board shall make an annual report of its proceedings to the governor on the first Monday in January of each year, which report shall contain an account of all moneys received and disbursed by them pursuant to this article.

1909, c. 444, s. 11.

6696. Annual fees; failure to pay; collection by suit. Every registered optometrist shall, in every year after one thousand nine hundred and nine, pay to the board of examiners the sum of not over two dollars, the amount to be fixed by the board, as a fee for the year. Such payments shall be made prior to the first day of April in each year, and in case of default in the payment by any person his certificate may be revoked by the examiners upon twenty days notice of the time and the place of considering such revocation. But no license shall be revoked for nonpayment if the person so notified shall pay, before or at the time of consideration, his fee and such penalty as may be imposed by the board. The penalty imposed on any one person so notified as a condition of allowing his license to stand shall not exceed five dollars. The board of examiners may collect any dues provided for in this section by suit.

1909, c. 444, s. 12.

6697. Revocation and regrant of certificate. The board shall have the power to revoke any certificate of registration granted by it under this article for conviction of crime, habitual drunkenness for six months immediately before charge to be made, gross incompetency, contagious or infectious diseases. Before any certificate may be so revoked the holder thereof shall have a notice in writing of the charge or charges against him, and at a day specified in said notice, at least five days after the service thereof, be given a public hearing and have an opportunity to produce testimony in his behalf and to confront the witnesses against him. Any person whose certificate has been so revoked may, after the expiration of ninety days, apply to have the same regranted, and the same shall be regranted him upon a satisfactory showing that the disqualification has ceased.

1909, c. 444, s. 13.

6698. Violation of article forbidden. Any person who shall violate any of the provisions of this article, and any person who shall hold himself out to the public as a practitioner of optometry without a certificate of registration provided for herein, shall be deemed guilty of a misdemeanor, and upon conviction may be punished by a fine of not more than one hundred dollars or imprisonment for not more than four months, or both, in the discretion of the court.

1909, c. 444, s. 14.

6699. Application of article. Nothing in this article shall be construed to apply to physicians and surgeons authorized to practice under the laws of North Carolina, or prohibit persons to sell spectacles, eyeglasses, or lenses as merchandise from permanently located and established places of business.

1909, c. 444, s. 15.

ART. 5. OSTEOPATHY

6700. Osteopathy defined. For the purpose of this article osteopathy is defined to be the science of healing without the use of drugs, as taught by the various colleges of osteopathy recognized by the North Carolina Osteopathic Society, Incorporated.

1907, c. 764, s. 8; 1913, c. 92, s. 3.

Examination and licensing of osteopaths required in order to protect the public: *State v. Siler*, 169-316. Act of 1913, c. 92, extends this requirement to all nondrug practitioners: *Ibid.* See *State v. McKnight*, 131-717; *State v. Biggs*, 133-729; *Allen v. Traction Co.*, 144-288.

6701. Board of examiners; membership; officers; meetings. There shall be a state board of osteopathic examination and registration, consisting of five members appointed by the governor, in the following manner, to wit: within thirty days after this article goes into effect the governor shall appoint five persons who are reputable practitioners of osteopathy, selected from a number of not less than ten who are recommended by the North Carolina osteopathic society, and this number may be increased to fifteen, upon the request of the governor; the recommendation of the president and secretary being sufficient proof of the appointees' standing in the profession; and said appointees shall constitute the first board of osteopathic examination and registration. Their term of office shall be so designated by the governor that the term of one member shall expire each year. Thereafter in each year the governor shall in like manner appoint one person to fill the vacancy in the board thus created, from a number of not less than five, who are recommended by the state osteopathic society; the term of said appointee to be for five years. A vacancy occurring from any other cause shall be filled by the governor for the unexpired term in the same manner as last above stated. The board shall, within thirty days after its appointment, meet in the city of Raleigh, and organize by electing a president, secretary and treasurer, each to serve for one year. Thereafter the election of said officers shall occur annually. The treasurer and secretary shall each give bond, approved by the board, for the faithful performance of their respective duties, in such sum as the board may from time to time determine. The board shall have a common seal, and shall formulate rules to govern its actions; and the president and secretary shall be empowered to administer oaths. The board shall meet in the city of Raleigh at the call of the president, in the month following the election of its officers, and in July of each succeeding year, and at such other times and places as a majority of the board may designate. Three members of the board shall constitute a quorum, but no certificate to practice osteopathy shall be granted on an affirmative vote of less than three. The board shall keep a record of its proceedings, and a register of all applicants for certificates, giving the name and location of the institution granting the applicant the degree of doctor of or diploma in osteopathy or other nondrug-giving school of medical

practice; the date of his or her diploma, and also whether the applicant was rejected or a certificate granted. The record and registers shall be prima facie evidence of all matters recorded therein.

1907, c. 764, s. 1; 1913, c. 92, s. 1.

6702. Examination and certification of applicant; prerequisites. Any person, before engaging in the practice of osteopathy in this state, shall, upon the payment of a fee of twenty-five dollars, make application for a certificate to practice osteopathy to the board of osteopathic examination and registration on a form prescribed by the board, giving, first, his name, age (which shall not be less than twenty-one years), and residence; second, evidence that such applicant shall have, previous to the beginning of his course in osteopathy, a certificate of examination for admission to the freshman class of a reputable literary or scientific college, a diploma from a high school, academy, state normal school, college, or university, approved by aforesaid board; third, the date of his diploma, and evidence that such diploma was granted on personal attendance and completion of a course of not less than four terms of five months each, and after July, one thousand nine hundred and seventeen, of four terms of not less than nine months each in three separate years; fourth, the name of the school or college of osteopathy from which said applicant was a graduate, and which shall have been in good repute as such at the time of the granting of his diploma, as determined by the board. The board may, in its discretion, accept as the equivalent of any part or all of the second, third, and fourth requirements evidence of five or more years reputable practice of osteopathy, provided such substitution be specified in the certificate, if the facts thus set forth, and to which the applicant shall be required to make affidavit, shall meet the requirements of the board, as prescribed by its qualifications for the practice of osteopathy, which shall include the subjects of anatomy, physiology, physiological chemistry, toxicology, osteopathic pathology, bacteriology, osteopathic diagnosis, hygiene, osteopathic obstetrics and gynecology, minor surgery, principles and practice of osteopathy, and such other subjects as the board may require. A physician's certificate issued by a reputable school of osteopathy to a graduate from a reputable school of medicine, after an attendance of not less than two terms of nine months each in two separate years, may be accepted by the board on the same terms as a diploma, and the holder thereof be subject to the same regulations in all other respects as other applicants before the board. The board may refuse to grant a certificate to any person convicted of a felony, or of gross unprofessional conduct, or who is addicted to any vice to such a degree as to render him unfit to practice osteopathy, and may, after due notice and hearing, revoke such certificate for like cause.

1907, c. 764, s. 2; 1913, c. 92, s. 1.

See annotation under section 6700.

6703. When examination dispensed with; temporary permit. The board may, upon the payment of a fee of two dollars, grant a certificate to practice osteopathy in this state without examination, if application therefor is filed within ninety days after the passage of this act, to any person having a diploma from a legally chartered school or college of osteopathy, which was in good standing at the time

of issuing of such diploma as defined by the board, and who shall meet the requirements of the board in other respects, and who was in active practice in this state at the time of the passage of this act.

The board may, in its discretion, dispense with an examination in the case, first, of an osteopathic physician duly authorized to practice osteopathy in any other state or territory, or the District of Columbia, who presents a certificate of license issued after an examination by the legally constituted board of such state, territory, or District of Columbia, accorded only to applicants of equal grade with those required in this state; or, second, an osteopathic physician who has been in the actual practice of osteopathy for five years, who is a graduate of a reputable school of osteopathy, who may desire to change his residence to this state, and who makes application on a form to be prescribed by the board, accompanied by a fee of twenty-five dollars.

The secretary of the board may grant a temporary permit until a regular meeting of the board, or to such time as the board can conveniently meet, to one whom he considers eligible to practice in the state, and who may desire to commence the practice immediately. Such permit shall only be valid until legal action of the board can be taken. In all the above provisions the fee shall be the same as charged to applicants for examination, except to those who are practicing in the state on the eighth day of March, 1907.

1907, c. 764, s. 2.

6704. Provisions of this article extended to nondrug-giving practitioners. The provisions of the two preceding sections shall apply to all other nondrug-giving practitioners, except chiropractors, by whatever name they are known or call themselves, or of whatever school they claim to be graduates or hold diplomas, and to any one who holds himself out as being able to diagnose, treat, operate, or prescribe for any human diseases, pain, injury, deformity, or physical condition, and who shall offer or undertake by any means or method to diagnose, treat, operate, or prescribe therefor without the use of drugs, but shall not apply to those practicing their profession as licensed physicians, nor to Christian Scientists or masseurs or any one following in his or her practice the orders of licensed drug-giving physicians: Provided, however, that all such persons so applying to said board for examination shall be examined only on the subject of anatomy, physiology, pathology, and diagnosis, by said board, but no license shall be issued by such board to those who claim to be correspondence school course graduates to practice in this state.

1913, c. 92, s. 2.

See *State v. Siler*, 169-314. For chiropractors, see section 6710 et seq.

6705. Fees held by board; salaries; payment of expenses. All fees shall be paid in advance to the treasurer of the board, to be by him held as a fund for the use of the state board of osteopathic examination and registration. The compensation and expenses of the members and officers of said board, and all expenses proper and necessary, in the opinion of said board, to discharge its duties under and to enforce the law, shall be paid out of such fund, upon the warrant of the president and secretary of said board, and no expense shall be created to exceed

the income of fees or fines as herein provided. The salaries shall be fixed by the board, but shall not exceed ten dollars per day per member, and railroad and hotel expenses.

1907, c. 764, s. 3.

6706. Subject to state and municipal regulations. Osteopathic physicians shall observe and be subject to all state and municipal regulations relating to the control of contagious diseases, the reporting and certifying of births and deaths, and all matters pertaining to public health, the same as physicians of other schools of medicine, and such reports shall be accepted by the officers or department to whom the same are made.

1907, c. 764, s. 4.

6707. Record of certificates; fees. Every person holding a certificate from the state board of examination and registration shall have it recorded in the office of the county clerk of the county in which he or she expects to practice. Until such certificate is filed for record, the holder shall exercise none of the rights or privileges therein conferred. Said clerk of the county shall keep in a book for that purpose a complete list of all certificates recorded by him, with the date of the recording of each certificate. Each holder of a certificate shall pay to said clerk a fee of one dollar for making such record.

1907, c. 764, s. 5.

6708. Practice without compliance with law prohibited. Any person who shall practice, or pretend or attempt to practice, or use the science or system of osteopathy in treating diseases of the human body by fraud or misrepresentation; or any person who shall buy, sell, or fraudulently obtain any diploma, license, record, or registration to practice osteopathy, illegally obtained, or signed or issued unlawfully, or under fraudulent representation; or who shall use any of the forms, or letters, "Osteopathy," "Osteopath," or "Osteopathist," "Diplomate in Osteopathy," "D. O.," "D. Sc.O.," "Osteopathic Physician," "Doctor of Osteopathy," or any other title or letters, either alone or with other qualifying words or phrases, under such circumstances as to induce the belief that the person who uses such term or terms is engaged in the practice of osteopathy, without having complied with the provisions of this article, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five dollars nor more than one hundred dollars for each offense, or imprisoned not less than three months nor more than six months in the county jail.

The punishment prescribed in this section shall likewise apply to other non-drug-giving practitioners to whom this article is extended by the fifth section [6704] thereof and who violates any of its provisions.

1907, c. 764, s. 6; 1913, c. 92, s. 5.

6709. Objects of North Carolina osteopathic society. The object of the North Carolina osteopathic society shall be to unite the osteopaths of this state for mutual aid, encouragement, and improvement; to encourage scientific research in the laws of health and treatment of diseases of the human family; to elevate

the standard of professional thought and conduct in the practice of osteopathy and to restrict the practice of osteopathy to persons educated and trained in the science and possessing a diploma from a reputable college of osteopathy.

1907, c. 764, s. 7.

ART. 6. CHIROPRACTIC

6710. Creation and membership of board of examiners. There is hereby created and established a board to be known by the name and style of the state board of chiropractic examiners. The board shall be composed of three practicing chiropractors of integrity and ability, who shall be residents of the state, and no more than two members of said board shall be graduates from the same school or college of chiropractic.

1917, c. 73, s. 1.

6711. Appointment; term; successors; recommendations. The governor shall appoint the members of the state board of chiropractic examiners, whose terms of office shall be as follows: One member shall be appointed for a term of one year from the close of the next regular annual meeting of the North Carolina board of chiropractors; one member shall be appointed for a term of two years from such time, and one member shall be appointed for a term of three years from such time. Annually thereafter, at the time of the annual meeting or immediately thereafter, the governor shall appoint one member of the state board of chiropractic examiners, whose term of office shall be three years, and such members of the board of examiners shall be appointed from a number of not less than five who shall be recommended by the North Carolina board of chiropractors.

1917, c. 73, s. 2.

6712. First appointments. Until the members of the board are appointed as aforesaid the governor shall appoint the state board of chiropractic examiners, who shall hold office until the close of the next regular annual meeting of the North Carolina board of chiropractors.

1917, c. 73, s. 3.

6713. Organization and vacancies. The board of chiropractic examiners shall elect such officers as they may deem necessary, and in case of a vacancy, caused by death or in any other manner, a majority of the board shall have the right to fill the vacancy by the election of some other member of the North Carolina board of chiropractors.

1917, c. 73, s. 4.

6714. Rules and regulations. The state board of chiropractic examiners may adopt suitable rules and regulations for the performance of their duties.

1919, c. 148, s. 4.

6715. Definitions of chiropractic; examinations; educational requirements. Chiropractic is herein defined to be the science of adjusting the cause of disease by realigning the twenty-four movable vertebræ of the spine, releasing pressure on nerves radiating from the spine to all parts of the body, and allowing the

nerves to carry their full quota of health current (nerve energy) from the brain to all parts of the body. It shall be the duty of the board of examiners to examine all applicants who shall furnish satisfactory proof of good character and of graduation from a regular chiropractic school of good standing, and such examination shall embrace such branches of study as are usually included in the regular course of study for chiropractors in chiropractic schools or colleges of good standing, including especially an examination of each applicant in the science of chiropractic as herein defined. Every applicant for license shall, after the organization of the North Carolina board of chiropractors, which organization shall be perfected immediately after the passage of this law, furnish to said board of examiners sufficient and satisfactory evidence that, prior to the beginning of his course in chiropractic, he had obtained a high school education, or what is equivalent thereto, entitling him to admission in a reputable college or university; and he shall also exhibit to said board of chiropractic examiners, or satisfy them that he holds, a diploma from a reputable chiropractic college, and not a correspondence school, and that said diploma was granted to him on a personal attendance and completion of a regular three years course in such chiropractic college, and such applicant shall be examined in the following studies: Chiropractic analysis, chiropractic philosophy, chiropractic neurology, palpation, nerve tracing, microscopy, histology, anatomy, gynecology, jurisprudence, chemistry, pathology, hygiene, physiology, embryology, eye, ear, nose, and throat, dermatology, symptomology, spinography, chiropractic orthopody, and the theory, teaching, and practice of chiropractic.

Any person who has been practicing chiropractic in this state prior to the first day of January, one thousand nine hundred and eighteen, may apply for and receive license to practice chiropractic in this state upon proof of good character and proper proficiency upon examination; and all those practicing chiropractic prior to the first day of January, one thousand nine hundred and seventeen, shall be granted license without an examination.

Any chiropractor holding a license issued to him in another state by a regular board of chiropractic examiners may apply for and receive a license to practice chiropractic in this state upon proof of good moral character and that he has been practicing chiropractic under such license for one year.

1917, c. 73, s. 5; 1919, c. 148, ss. 1, 2, 5.

6716. Annual meetings. The board of chiropractic examiners and the North Carolina board of chiropractors shall hold their annual meetings at the same time and place. But the said board of examiners may, in their discretion, meet not more than three days in advance of the annual meeting of the North Carolina board of chiropractors.

1917, c. 73, s. 6.

6717. Grant of license; temporary license. The board of chiropractic examiners at such regular annual meeting of the board shall grant to each applicant who is found to be competent, upon examination, a license authorizing him or her to practice chiropractic in North Carolina. Any two members of said board may grant a temporary license to any applicant who shall comply with the requirements of this article as to proof of good character and of graduation from a chiro-

practice school or college as prescribed in this article; but such temporary license shall not continue in force longer than until the next annual meeting of the said board of examiners, and in no case shall a temporary license be granted to an applicant who has already been refused a license by the board of examiners at an annual meeting.

1917, c. 73, s. 7.

6718. Graduates from other states. A graduate of a regular chiropractic school who comes into this state from another state may be granted a license by the board of examiners as required in this article.

1917, c. 73, s. 8.

6719. Practice without license a misdemeanor. Any person practicing chiropractic in this state without having first obtained a license as provided in this article shall be guilty of a misdemeanor and fined or imprisoned, or both, in the discretion of the court.

1917, c. 73, s. 9.

6720. Records of board. The secretary of the board of chiropractic examiners shall keep a record of the proceedings of the board, giving the name of each applicant for license, and the name of each applicant licensed and the date of such license.

1917, c. 73, s. 10.

6721. Application fee. Each applicant shall pay the secretary of said board a fee of twenty-five dollars.

1917, c. 73, s. 11.

6722. Extent and limitation of license. Any person obtaining a license from the board of chiropractic examiners shall have the right to practice the science known as chiropractic, in accordance with the method, thought, and practice of chiropractors, but shall not prescribe for or administer to any person any medicine or drugs, nor practice osteopathy or surgery.

1917, c. 73, s. 12.

6723. Registration of license. Any person desiring to engage in the practice of chiropractic, having first obtained a license as herein provided, shall appear before the clerk of the superior court of the county in which he resides, or proposes to practice, for registration as a chiropractor. He shall produce and exhibit to the said clerk a license obtained from the board of chiropractic examiners, and upon such exhibition the clerk shall register the name and residence of the applicant, giving the date of such registration, in a book to be kept for the purpose of registering chiropractors, and shall issue to him a certification of such registration under the seal of the superior court of such county, for which the clerk shall be entitled to collect from said applicant a fee of fifty cents. The person obtaining such certificate shall be entitled to practice chiropractic anywhere in this state; but if he shall remove his residence to another county, he shall exhibit said certificate to the clerk of the superior court of such other county and be

registered. Any one receiving a temporary license as provided in this article shall not be entitled to register, but may practice anywhere in this state during the time such temporary license shall be in force.

1917, c. 73, s. 13.

6724. Licensed chiropractors may practice in public hospitals. A licensed chiropractor in this state may have access to and practice chiropractic in any hospital or sanitarium in this state that receives aid or support from the public.

1919, c. 148, s. 3.

6725. Grounds for refusal or revocation of license. The board of chiropractic examiners may refuse to grant or may revoke a license to practice chiropractic in this state, upon the following grounds: immoral conduct, bad character, the conviction of a crime involving moral turpitude, habitual intemperance in the use of ardent spirits, narcotics, or stimulants to such an extent as to incapacitate him or her for the performance of such professional duties.

1917, c. 73, s. 14.

6726. Annual fee for renewal of license. All persons practicing chiropractic in this state shall, on or before the first Tuesday after the first Monday in January in each year after licenses issued to them as herein provided, pay to the secretary of the board of chiropractic examiners a renewal license fee of two dollars, the payment of which, and a receipt from the secretary of the board, shall work a renewal of the license fee for twelve months.

1917, c. 73, s. 15.

6727. Pay of board and authorized expenditures. The members of the board of chiropractic examiners shall receive their actual expenses, including railroad fare and hotel bills, when meeting for the purpose of holding examinations, and performing any other duties placed upon them by this article, such expenses to be paid by the treasurer of the board out of the moneys received by him as license fees, or from renewal fees. The board shall also expend out of such fund so much as may be necessary for preparing licenses, securing seal, and all other necessary expenses in connection with the duties of the board.

1917, c. 73, s. 16.

6728. Chiropractors subject to state and municipal regulations. Chiropractors shall observe and be subject to all state and municipal regulations relating to the control of contagious and infectious diseases.

1917, c. 73, s. 17.

ART. 7. TRAINED NURSES

6729. Board of examiners and inspector of training schools. A board of examiners of trained nurses, composed of five members, two physicians and three registered nurses, to be elected by the medical society of the state of North Carolina and the North Carolina state nurses' association, respectively, except the first board, is hereby created, to be known by the title "The Board of Examiners

of Trained Nurses of North Carolina." Each member of said board shall serve a term of three years or until his or her successor is appointed, except the first board elected under this article, the members of which shall be and serve as follows: For terms expiring July the first, nineteen hundred and nineteen, or until their successors are qualified, Julia Libby, R.N., of Mecklenburg, and Delia Dixon-Carroll, M.D., of Wake; for terms expiring July the first, nineteen hundred and twenty, or until their successors are qualified, Lois Toomer, R.N., of New Hanover; Maria P. Allen, R.N., of Burke; and Thompson Fraser, M.D., of Buncombe. The board shall fill any vacancy for an unexpired term. An inspector of training schools for nurses shall be annually appointed by the North Carolina state nurses' association, who shall report annually to the board of examiners. Said inspector shall be a registered nurse, her duties and compensation to be fixed by the board of nurse examiners.

1917, c. 17, s. 1.

6730. Board; organization; officers; compensation; expenses. Three members of the board shall constitute a quorum, two of whom shall be nurses. The board shall adopt and have custody of a seal and shall frame by-laws and regulations for its own government and for the execution of the provisions of this article. The officers of said board shall be a president and a secretary-treasurer, both to be elected from its nurse members. The treasurer shall give bond in such sum as may be fixed in the by-laws, and the premium therefor to be paid from the treasury of said board. The members of the board of examiners shall each receive as compensation for his or her services four dollars per diem and actual traveling and hotel expenses. The secretary-treasurer may receive an additional salary, to be fixed by the board, not to exceed two hundred and fifty dollars per annum, said expenses and salaries to be paid from fees received by the board under the provisions of this article, and in no case to be charged upon the treasury of the state. All moneys received in excess of said allowance, and other expenses provided for, shall be held by the secretary-treasurer for the expenses of the board and for extending nursing education in the state.

1917, c. 17, s. 2.

6731. Meetings for examinations; prerequisites of applicants. The board of examiners of trained nurses of North Carolina shall convene not less frequently than once annually and at any time ten or more applicants shall notify the secretary that they desire an examination. Thirty days prior to such meetings notice, stating time and place of examinations, shall be published in one nursing journal and three daily state papers. At such meetings it shall be the duty of the board of examiners to examine graduate nurses applying for license to practice their profession in North Carolina. An applicant must prove to the satisfaction of the board that he or she is twenty-one years of age, is of good moral character, and has received at least one year high school education or its equivalent. Applicants shall have graduated from a training school for nurses connected with a general hospital where a systematic course of practical and theoretical instruction covering a period of three years is given in the hospital, or from a training school connected with small or special hospitals and sanatoria meeting the aforesaid requirements by affiliation with one or more training

schools. Training schools for nurses may give such credits for college work on the three-year course as they may deem wise, such credits not to total more than one year for any one person.

1917, c. 17, s. 3.

6732. Scope of examinations; fees; licensing. Examinations shall be held in anatomy, physiology, materia medica, dietetics, hygiene, and elementary bacteriology, obstetrical, medical, and surgical nursing, nursing of children, contagious diseases and ethics of nursing, and such other subjects as may be prescribed by the examining board. The subject of contagious diseases may be given in theory only. If on examination the applicant should be found competent, the board shall grant a license, authorizing him or her to register as herein provided, and to use the title "Registered Nurse," signified by the letters "R. N." Before an applicant shall be permitted to take such an examination he or she shall pay to the secretary of the examining board an examination fee of ten dollars. In the event of the failure of applicant to pass examination, one-half of the above-named fee shall be returned to applicant.

1917, c. 17, s. 4.

6733. Licenses without examination. The board shall have authority to issue licenses, without examination, to nurses registered in other states, provided that said states shall maintain an equivalent standard of registration requirements. The examination fee shall accompany each such application for license.

1917, c. 17, s. 5.

6734. Only licensed nurses to practice; provisos. On and after the ratification of this article all "trained," "graduate," "licensed," or "registered" nurses must obtain license from the nurses' examining board before practicing their profession in this state, and before using the abbreviation "R. N." must obtain a certificate of registration from the clerk of the superior court of any county as hereinafter provided: Provided, that all nurses graduating prior to the ratification of this article who shall show to the satisfaction of the board of examiners that they are graduates, in good standing, and were engaged in the profession of nursing in the state of North Carolina before the ratification of this article, shall be entitled to registration without examination and without the payment of the examination fee, provided such application be made before June first, nineteen hundred and seventeen. This article shall not apply to nurses who began their training course prior to the second day of February, nineteen hundred and seventeen, and who apply for examination on or before the first day of June, one thousand nine hundred and nineteen. It is provided, furthermore, that nothing contained in this section shall be construed as a requirement for renewal of license or registration of nurses already licensed and registered in North Carolina.

1917, c. 17, s. 6; 1917, s. 288.

6735. Certain persons not affected by this article. This article shall not be construed to affect or apply to the gratuitous nursing of the sick by friends or members of the family, or any hospital or sanatorium that send their nurses into private homes or elsewhere for hire during the time they are in said institution

taking training, or to any person taking care of the sick for hire, who does not represent himself or herself or in any way assume to practice as a "trained," "graduate," "licensed," or "registered nurse."

1917, c. 17, s. 7.

6736. Registration of nurses. The clerk of the superior court of any county, upon presentation to him of a license from the state board of nurse examiners, issued at a date not more than twelve months previous, shall enter the date of registration and the name and residence of the holder thereof in a book to be kept in his office for this purpose and marked "Record of Registered Nurses," and shall issue to the applicant a certificate of such registration, under the seal of the superior court of the county, upon a form to be prescribed by the board of examiners. For such registration he shall charge a fee of fifty cents.

1917, c. 17, s. 8.

6737. Revocation of licenses. The board shall have power to revoke the license of any registered nurse upon conviction of gross incompetence, dishonesty, intemperance, or any act derogatory to the morals or standing of the profession of nursing. No license shall be revoked except upon charges preferred. The accused shall be furnished a written copy of such charge and given not less than twenty days notice of the time and place when said board shall accord a full and fair hearing on the same. Upon the revocation of a license and certificate, the name of the holder thereof shall be stricken from the roll of registered nurses in the hands of the secretary of the board, and by the clerk of the superior court from his register, upon notification of such action by said secretary.

1917, c. 17, s. 9.

6738. Violation of article misdemeanor. Any person procuring license under this article by false representation or who shall refuse to surrender a license which has been revoked in the manner prescribed in the preceding section, or who shall use the title "trained," "graduate," "licensed" or "registered nurse," or the abbreviation "R.N." without having first obtained a license, shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not exceeding thirty days. Each act shall constitute a new offense.

Rev., s. 3656; 1917, c. 17, s. 10.

6739. Training school for nurses at Sanatorium. The state sanatorium for the treatment of tuberculosis, located at Sanatorium, North Carolina, is hereby authorized and power is hereby expressly given it to organize and conduct a training school for nurses in connection with the said sanatorium. The superintendent of the North Carolina sanatorium for the treatment of tuberculosis shall be ex officio dean of the training school for nurses, and he shall have power and authority to appoint such faculty, prescribe such course or courses of lectures, study and clinical work, and award such diplomas, certificates, or other evidence of the completion of such course or courses as he may think wise and proper, and perform such other functions and do such other acts as he may think necessary in the conduct of the said training school.

1915, c. 163, ss. 1, 2.

6740. Colored nurses for colored patients. In every public and private hospital, sanatorium, and institution in North Carolina where colored patients are admitted for treatment and where nurses are employed it shall be mandatory upon the management of every such hospital, sanatorium, and institution to employ colored nurses to care for and wait upon colored patients.

Every person, firm, or corporation violating the provisions of this article shall be guilty of a misdemeanor, and upon conviction thereof shall be fined the sum of fifty dollars for each and every offense.

1915, c. 284.

ART. 8. FEMALE STUDENTS IN MEDICAL AND SURGICAL INSTITUTIONS

6741. Definitions. 1. The words "medical and surgical institution" in this article shall mean any and all hospitals, sanitariums, sanatoriums, or any other institution whose purpose it is to care for the sick in this state.

2. The word "student" in this article shall mean any and all female persons engaged in the care of the sick in any medical or surgical institution in this state: Provided, this article shall not apply to registered nurses.

1917, c. 181, ss. 1, 2.

6742. Hours on duty per week and day. No medical or surgical institution nor the agent or employee of the same in this state shall require, or cause to be required, any student to remain on duty for more than eighty hours in any week, or to remain on duty for a longer period than twelve hours in any day of twenty-four hours, except in special and emergency cases. In such cases any student may be required to remain on duty for a period of sixteen hours in twenty-four: Provided, that sleeping facilities are furnished in the room in which special duty is required, and that an opportunity is given to the student to sleep for at least half the period on special duty.

1917, c. 181, ss. 3, 4.

6743. Reduction of pay forbidden. No medical or surgical institution, or the agent or employee of the same, in this state shall require or cause to be required any student to receive less for her services than she is receiving on June first, nineteen hundred and seventeen.

1917, c. 181, s. 6.

6744. Orders in conflict with article forbidden. No medical or surgical institution, or agent or employee of the same, in this state shall issue, orally or in writing, any orders conflicting in any way with the provisions of this article.

1917, c. 181, s. 7.

6745. Seats to be furnished. It shall be the duty of every medical or surgical institution in this state, or the agent or employee in charge of the same, to furnish comfortable seats for all students for their use while not actively engaged in the care of their patients.

1917, c. 181, s. 8.

6746. Homes to be sanitary. It shall be the duty of every medical or surgical institution in this state, or the agent or employee in charge of the same, maintaining a home for students of such institution, to keep such home properly heated, ventilated, and in a sanitary condition.

1917, c. 181, s. 9.

6747. Provisions of article to be posted. It shall be the duty of every medical or surgical institution in this state, or the agent or employee in charge of the same, to print, or cause to be printed, all the provisions of this article upon cardboard, in type large enough that a person with normal sight can read the same at a distance of six feet. It shall be the further duty of such institution or persons in charge of the same to post or have posted a copy of this article upon the wall of every room and ward in which patients are placed.

1917, c. 181, s. 10.

6748. Violation of article misdemeanor. Any medical or surgical institution, or the agent or employee of the same, in this state violating the provisions of this article shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars nor more than two hundred dollars, or imprisoned, in the discretion of the judge presiding: Provided, that each violation of any of the provisions of this article shall constitute a separate offense.

1917, c. 181, s. 11.

6749. Health officer to inspect semiannually and report for prosecution. The city health officer, if there is such an officer, and if not, the county health officer, in the city or county in which any medical or surgical institution is situated, is hereby empowered and authorized to make personal investigation and inspection semiannually, on or about the first day of July and the first day of January in each year next after the passage of this act, of such institutions and homes of students of such institutions, and it shall be the duty of such health officer to report to the prosecuting attorney in the city or county recorder's court, if there be such court, and if not, to the solicitor of the judicial district, any violations of any of the provisions of this article, furnishing to such prosecuting attorney or solicitor any and all information which will aid in the conviction of the institution or institutions, person or persons violating the provisions of this article.

1917, c. 181, s. 12.

ART. 9. MIDWIVES

6750. Midwives to register. All persons, other than regularly registered physicians, practicing midwifery in this state shall register, without fee, their names and addresses with the secretary of the North Carolina state board of health, as required by the provisions of article 14, entitled Inflammation of Eyes of New-born, of the chapter Public Health.

1917, c. 257, ss. 8, 9.

NOTE.—For penalty for failure to register, see Public Health, s. 7187.

6751. Persons forbidden to practice midwifery. It shall be unlawful for any person who habitually gets drunk, or who is addicted to the excessive use of cocaine or morphine or other opium derivative, to practice midwifery for a fee.

1911, c. 34, s. 1.

6752. Disinfection of hands of practitioners. It shall be unlawful for any midwife or other person who practices midwifery for fees to touch or otherwise handle the private parts of the person of any patient upon whom such person is in attendance unless the person so in attendance shall first and immediately previous thereto thoroughly wash and disinfect his or her hands.

1911, c. 34, s. 2.

6753. Violation of two preceding sections misdemeanor. Any person violating the two preceding sections shall be guilty of a misdemeanor, and upon conviction shall be fined not less than five nor more than ten dollars.

1911, c. 34, s. 4.

NOTE.—For duty of midwives to disinfect eyes of newborn, see Public Health, art. 14.

ART. 10. VETERINARIES

6754. State veterinary medical association incorporated. The association of veterinary surgeons and physicians calling themselves the North Carolina state veterinary medical association is declared to be a body politic and corporate under the name and style of The North Carolina State Veterinary Medical Association.

Rev., s. 5431; 1903, c. 503.

6755. Board of veterinary medical examiners; appointment; membership; organization. In order to properly regulate the practice of veterinary medicine and surgery there shall be a board to be known as the North Carolina board of veterinary medical examiners, to consist of five members of the North Carolina veterinary medical association. The governor shall annually appoint one member of such board, who shall hold his office for five years, and until his successor is appointed and qualified. Every person so appointed shall, within thirty days after notice of appointment, appear before the clerk of the superior court of the county in which he resides and take oath to faithfully discharge the duties of his office.

Rev., s. 5432; 1903, c. 503, s. 2.

6756. Meeting of board; powers. The board of examiners shall meet at least once a year at such times and places as the association may decide upon, and remain in session sufficiently long to examine all who may make application at the appointed time for a license. Three members of said board shall constitute a quorum. The board of examiners shall elect a president and a secretary, who shall also perform the duties of a treasurer. They shall keep a regular record of their proceedings in a book to be kept for that purpose, which shall always be open for inspection, and shall keep a record of all applicants for a certificate and of all who are granted a certificate, and shall publish the names of the successful applicants at least once each year in two newspapers published in the state. The board shall have authority to adopt such by-laws and regulations as may be necessary.

Rev., s. 5433; 1903, c. 503, ss. 3, 4, 6, 7.

6757. Compensation of board. The members of such board shall receive such compensation for their services, not to exceed four dollars per day, and their

traveling expenses, as the association may decide upon, to be paid by the secretary of the board out of any money coming into his hands as secretary. None of the expenses of the board or of the members shall be paid by the state.

Rev., s. 5434; 1903, c. 503, s. 9.

6758. Examination and licensing of veterinaries. The board of examiners shall, at their annual meeting, examine all applicants who desire license to practice veterinary medicine or surgery. If upon such examination the applicant be found to possess sufficient skill to practice veterinary medicine or surgery, and of good moral character, a license or certificate shall be issued to him. No certificate shall be granted except with a concurrence of a majority of the members present. To prevent delay and inconvenience two members of the board of examiners may grant a temporary certificate to practice veterinary medicine or surgery, which shall be in force only until the next regular meeting of the board of examiners, but in no case shall such temporary certificate be granted to any person who has been an unsuccessful applicant for a certificate before the board. The board shall have power to require each applicant to pay a fee of not more than ten dollars before issuing a certificate and five dollars before issuing a temporary certificate.

Rev., s. 5435; 1903, c. 503, ss. 3, 5, 8.

6759. Rescission of license. The board shall have power to rescind any certificate that may have been granted by it or annul any registration made under this article, upon satisfactory proof that the person thus licensed has been guilty of grossly immoral conduct or malpractice as determined by the board. And it shall be the duty of said board to furnish any information pertaining to the practice of veterinary medicine or surgery upon application for same by any one practicing under this article.

Rev., s. 5436; 1903, c. 503, s. 10.

6760. Practitioners before one thousand nine hundred and three. All persons who have been practicing veterinary medicine or surgery previous to the first day of March, one thousand nine hundred and three, shall be allowed to practice veterinary medicine or surgery in this state: Provided, they make affidavit to the effect that they have practiced veterinary medicine or surgery as a profession previous to the said date, and have had their names registered in the office of the clerk of the superior court of the county in which they reside on or before June first, one thousand nine hundred and nineteen, in a book that shall be kept for that purpose.

Rev., s. 5437; 1903, c. 503, s. 11; 1905, c. 320; 1913, c. 129; 1919, c. 94.

6761. When may practice without license. Nothing in this article shall be construed to prohibit any member of the medical profession from prescribing for domestic animals in cases of emergency and collecting a fee therefor, nor to prohibit gratuitous services by any person in an emergency, nor to prevent any person from practicing veterinary medicine or surgery on any animal belonging to himself, or to prevent any one from castrating or spaying any of the domestic animals. And this article shall not apply to commissioned veterinary surgeons in the United States army.

Rev., s. 5438; 1903, c. 503, s. 12.

6762. Violation of article misdemeanor. Any person practicing veterinary surgery or medicine in this state, without first having complied with the provisions of this article, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than fifty dollars or imprisoned not less than thirty days, in the discretion of the court.

1913, c. 129, s. 2.

ART. 11. CHIROPODISTS

6763. Chiropody defined. Chiropody (podiatry) as defined by this article is the surgical, medical and mechanical treatment of all ailments of the human foot, except the correction of deformities requiring the use of the knife, amputation of the foot or toes, or the use of an anesthetic other than local.

1919, c. 78, s. 2.

6764. Unlawful to practice unless registered. On and after the first of July, one thousand nine hundred and nineteen, it shall be unlawful for any person to practice or attempt to practice chiropody (podiatry) in this state or to hold himself out as a chiropodist (podiatrist) or to designate himself or describe his occupation by the use of any words or letters calculated to lead others to believe that he is a chiropodist (podiatrist) unless he is duly registered as provided in this article.

1919, c. 78, s. 1.

6765. Board of chiropody examiners; how appointed; terms of office. There shall be established a board of chiropody (podiatry) examiners for the state of North Carolina. This board shall consist of three members who shall be appointed by the North Carolina pedic association. All of such members shall be chiropodists who have practiced chiropody in North Carolina for a period of not less than one year. The members of the board shall be appointed by said association for a term of three years: Provided, the members of the first board shall be appointed to hold office for one, two and three years respectively, and one member shall be appointed annually thereafter by said association. The board shall have authority to elect its own presiding and other officers.

1919, c. 78, s. 3.

6766. Applicants to be examined; examination fee; requirements. Any person not heretofore authorized to practice chiropody (podiatry) in this state shall file with the board of chiropody examiners an application for examination accompanied by a fee of twenty-five dollars, together with proof that the applicant is more than twenty-one years of age, is of good moral character, and has obtained a preliminary education equivalent to two years instruction in a high school; on and after January first, one thousand nine hundred and twenty-two, three years instruction in a high school or its equivalent; and on and after January first, one thousand nine hundred and twenty-five, four years instruction in a high school or its equivalent. Such applicant, before presenting himself for examination, must be a graduate of a legally incorporated school of chiropody (podiatry) acceptable to the board.

1919, c. 78, s. 9.

6767. Examinations; subjects; certificates. The board of chiropody examiners shall hold at least one examination annually for the purpose of examining applicants under this article. The examinations shall be held at such time and place as the board may see fit, and notice of the same shall be published in one or more newspapers in the state. The board may make such rules and regulations as it may deem necessary to conduct its examinations and meetings. It shall provide such books, blanks and forms as may be necessary to conduct such examinations, and shall preserve and keep a complete record of all its transactions. Examinations for registration under this article shall be in the English language and shall be written, oral, or clinical, or a combination of written, oral, or clinical, as the board may determine, and shall be in the following subjects wholly or in part: Anatomy, physiology, pathology, bacteriology, chemistry, diagnosis and treatment, therapeutics, clinical chiropody and asepsis; limited in their scope to the treatment of the foot. No applicant shall be granted a certificate unless he obtains a general average of seventy-five or over, and not less than fifty per cent in any one subject. After such examination the board shall, without unnecessary delay, act on same and issue certificates to the successful candidates, signed by each member of the board; and the board of chiropody examiners shall report annually to the North Carolina pedic association.

1919, c. 78, s. 4.

6768. Reëxamination of unsuccessful applicants. An applicant failing to pass his examination shall within one year be entitled to reëxamination upon the payment of two dollars, but not more than two reëxaminations shall be allowed any one applicant. Should he fail to pass his third examination he shall file a new application before he can again be examined.

1919, c. 78, s. 6.

6769. Practitioners before enactment of this article; certificates. Every person who is engaged in the practice of chiropody (podiatry) in this state one year next prior to the enactment of this article shall file with the board of chiropody examiners on or before the first day of July, one thousand nine hundred and nineteen, a written application for a certificate to practice chiropody (podiatry), together with proof satisfactory to the board that the applicant is more than twenty-one years of age and has been practicing chiropody in this state for a period of more than one year next prior to the passage of this article, and upon the payment of a fee of ten dollars the said board of chiropody examiners shall issue to such applicant a certificate to practice chiropody (podiatry) in this state.

1919, c. 78, s. 5.

6770. Certificates to registered chiropodists of other states. Applicants registered or certified by examiners of other states whose requirements are equal to those of this state may, upon the payment of a fee of twenty-five dollars, be granted a certificate without examination: Provided, that the provisions of this section shall be extended only to those states which extend to this state the same privilege.

1919, c. 78, s. 8.

6771. Certificates filed with clerk of court; clerk to keep record. Every person receiving a certificate from the board shall file the same with the clerk of the court of the city or county in which he resides. It shall be the duty of the clerk to register the name and address and date of the certificate in a book kept for such purpose as a part of the records of his office, and the number of the book and the page therein containing said recorded copy shall appear on the face of the certificate over the name of the clerk recording the same. The person thus registering shall pay to the clerk a fee of fifty cents.

1919, c. 78, s. 7.

6772. Revocation of certificates; grounds for; suspension of certificate. The board of chiropody examiners may revoke by a majority vote of its members any certificate it has issued, and cause the name of the holder to be stricken from the book of the registration by the clerk of the court in the city or county in which the name of the person whose certificate is revoked is registered, for any of the following causes:

1. The wilful betrayal of a professional secret.
2. Any person who in any affidavit required of the applicant for certificate, registration, or examination under this article shall make a false statement.
3. Any person convicted of a crime involving moral turpitude.
4. Any person habitually indulging in the use of narcotics, ardent spirits, stimulants or any other substance which impairs intellect and judgment to such an extent as in the opinion of the board to incapacitate such person for the performance of his professional duties.

Any person against whom charges have been made shall be notified of the fact and a copy of the charges shall be sent him by the board, and he shall be given a fair and impartial trial by the board, whose decisions shall be made by a majority vote of its members.

The board may suspend any certificate granted under this article for a period not exceeding six months on account of any misconduct on the part of the person registered which would not, in the judgment of the board, justify the revocation of his certificate.

1919, c. 78, ss. 12, 13.

6773. Fees for certificates and examinations; compensation of board. To provide a fund in order to carry out the provisions of this article the board shall charge ten dollars for each certificate issued and fifteen dollars for each examination. From such funds all expenses and salaries, not exceeding four dollars per diem for each day actually spent and actual railroad expenses in addition, shall be paid by the board: Provided, that at no time shall the expenses exceed the cash balance on hand.

1919, c. 78, s. 14.

6774. Unlawful practice of chiropody a misdemeanor. Any person who shall practice or attempt to practice chiropody (podiatry) in this state without having complied with the provisions of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty nor more than two

hundred dollars, or shall be imprisoned for not less than thirty nor more than ninety days. Nothing in this article shall be construed to interfere with physicians in the discharge of their professional duties.

1919, c. 78, s. 10.

6775. Sheriffs and police to report violators of this article. It shall be the duty of the police department of the cities and the sheriff of each county in the state to see that all practitioners of chiropody (podiatry) in the state are legally registered according to the provisions of this article, and to report to the state's attorney of the city or county all cases of violation of this article; whereupon the state's attorney shall promptly prosecute those violating the provisions of this article.

1919, c. 78, s. 11.

6776. Provisions of this article to be published. Within thirty days after the enactment of this article the board of chiropody examiners shall give notice of the provisions of this article by publishing the same or an abstract thereof in two or more newspapers published in this state.

1919, c. 78, s. 4.

ART. 12. EMBALMERS

6777. State board; election; qualifications; term; vacancies. The State board of embalmers shall consist of five members, elected by the state board of health, three of whom shall be members of the state board of health, the other two shall be practical embalmers, having experience in the care and disposition of dead human bodies. One member of such board shall be elected in June, one thousand nine hundred and five, and annually thereafter during the month of June one member of such board shall be elected. The term of office shall begin on the first day of July next after the election, and continue for five years. The state board of health shall fill all vacancies in such board.

Rev., s. 4384; 1901, c. 338, ss. 1, 2, 3.

6778. Members; removal; oath. The state board of health shall have power to remove from office any member of said board for neglect of duty, incompetency, or improper conduct. The state board of health shall furnish each person appointed to serve on the state board of embalmers a certificate of appointment. The appointees shall qualify by taking and subscribing to the usual oath of office before some person authorized to administer oaths, within ten days after said appointment has been made, which oath shall be filed with the board of embalmers.

Rev., s. 4385; 1901, c. 338, ss. 3, 4.

6779. Common seal; powers. The board shall adopt a common seal, and shall have all the powers and privileges conferred on it by the laws of the state.

Rev., s. 4386; 1901, c. 338, s. 6.

6780. Meetings; quorum; by-laws; officers; president to administer oaths. The board shall meet at least once every year, during the month of July, at such place as it may determine. Three members shall constitute a quorum. At each annual

meeting the board from its members shall select a president and a secretary, who shall hold their offices for one year, and until their successors are elected. The board shall, from time to time, adopt rules, regulations, and by-laws not inconsistent with the laws of this state or of the United States, whereby the performance of the duties of such board and the practice of embalming of dead human bodies shall be regulated. The president of the board (and in his absence a president pro tempore elected by the members present) is authorized to administer oaths to witnesses testifying before the board.

Rev., s. 4387; 1901, c. 338, ss. 5, 6, 7, 8.

6781. Grant and renewal of licenses; fees; license displayed. Every person not licensed as an embalmer, now engaged or desiring to engage in the practice of embalming dead human bodies, shall make written application to the state board of embalmers for a license, accompanying the same with a license fee of five dollars, whereupon the applicant shall present himself before the board at a time and place to be fixed by the board, and if the board shall find, upon due examination, that the applicant is of good moral character, possessed of skill and knowledge of said science of embalming and the care and disposition of the dead, and has a responsible knowledge of sanitation and the disinfection of bodies of deceased persons and the apartment, clothing, and bedding, in case of death from infectious or contagious diseases, and has had a special course in embalming in an approved school, or two years practical experience with a licensed and practical embalmer, who shall make affidavit upon the application that said applicant has had such experience under him, the board shall issue to such applicant a license to practice the art of embalming and the care and disposition of the dead, and shall register such applicant as a duly licensed embalmer. Such license shall be signed by a majority of the board and attested by its seal. All persons receiving a license under the provisions of this article shall also register the fact at the office of the board of health of the city, and where there is no board of health, with the clerk of the superior court in the county or counties in which it is proposed to carry on said practice, and shall display said license in a conspicuous place in the office of such licentiate. Every registered embalmer who desires to continue the practice of his profession shall annually, during the time he shall continue in such practice, on such day as the board may determine, pay to the secretary of the board a fee of two dollars for the renewal registration.

Rev., s. 4388; 1901, c. 338, ss. 9, 10; 1917, c. 36; 1919, c. 88.

6782. Embalming without license. If any person shall practice or hold himself out as practicing the art of embalming, without having complied with the provisions of this article, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty nor more than one hundred dollars for each offense.

Rev., s. 3644; 1901, c. 338, s. 14.

6783. Expenses and salaries of board. All expenses, salary, and per diem to members of this board shall be paid from fees received under the provisions of this article, and shall in no manner be an expense to the state. All moneys

received in excess of said per diem allowance and other expenses provided for shall be held by the secretary of said board as a special fund for meeting the expenses of said board.

Rev., s. 4389; 1901, c. 338, s. 11.

6784. Embalming schools have privileges of medical schools as to cadavers. Schools for teaching embalming shall have extended to them the same privileges as to the use of bodies for dissection while teaching as those granted to medical colleges.

Rev., s. 4390; 1901, c. 338, s. 15.

ART. 13. CADAVERS FOR MEDICAL SCHOOLS

6785. Board for distribution. The professors of anatomy of the several medical schools of the state shall be a board for the distribution of dead human bodies for the purpose of promoting the study of anatomy in this state, and shall have power to make proper rules for its government and the discharge of its functions under this article.

Rev., s. 4287; 1903, c. 666, s. 1.

6786. What bodies to be furnished. All officers, agents, or servants of the state of North Carolina or of any county or town having charge or control of any dead human body required to be buried at public expense, or of the dead body of any person who at the time of death was under sentence of death or imprisonment at hard labor for the violation of the criminal laws of the state, shall, upon the request of the board or its authorized agent, deliver such dead body to any one designated by the board for the purpose aforesaid: Provided, such body be not claimed within thirty-six hours, to be disposed of without expense to the state, county, or town, by any relative within the second degree of consanguinity, or by the husband or wife of such deceased person: Provided further, that the body of a Confederate soldier or of the wife of a Confederate soldier shall be excepted from the provisions of this article, and that the body of no white person shall be delivered to any school for the colored race.

This section shall not apply to the dead bodies of persons who are inmates of state hospitals, or to the bodies of travelers or strangers who die suddenly, or to the bodies of persons who die in the state schools for the blind or the deaf and dumb, or any other state school, or in county homes.

Rev., s. 4288; 1903, c. 666, s. 2; 1911, c. 188.

6787. How bodies distributed. The bodies obtained under this article shall be distributed among the several medical schools in proportion to the number of students studying anatomy in such schools. Upon the written application of the professor of anatomy, or his accredited representative, of any medical school established by law in the state, the person or persons having charge or control of said dead body or bodies, as specified, shall give such professor of anatomy, or his accredited representative, permission to take, at the expiration of twenty-four hours after death, the body or bodies of such persons, to be used within the state for the advancement of anatomical science; and it shall be the duty of any professor of anatomy receiving such body or bodies to immediately report this

fact to the secretary of the anatomical board. If any medical school, in the operation of this section, shall obtain more than its equitable proportion of bodies, as determined by the said secretary, then two-thirds of such excess shall be shipped to some other medical school in the state, to be designated by the secretary of the anatomical board.

Rev., s. 4289; 1903, c. 666, s. 3; 1911, c. 188.

6788. Bodies to be embalmed. The bodies obtained under this article shall be embalmed before being used for the purposes of dissection.

Rev., s. 4290; 1903, c. 666, s. 4.

6789. How expenses paid. All expenses for the delivery, distribution, and embalming of such dead bodies shall be borne by the medical school receiving same, and in no case shall the state or any county or town be liable therefor.

Rev., s. 4291; 1903, c. 666, s. 5.

6790. Violation of article misdemeanor. If any person shall fail or refuse to perform any duty imposed upon him by this article he shall be guilty of a misdemeanor and fined not exceeding one hundred dollars.

Rev., s. 3567; 1903, c. 666, s. 6.

CHAPTER 111

MILITIA

ART. 1. CLASSIFICATION OF MILITIA.

- 6791. Composition of militia.
- 6792. Composition of national guard.
- 6793. Composition of naval militia.
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ART. 1. CLASSIFICATION OF MILITIA

6791. Composition of militia. The militia of the state shall consist of all able-bodied male citizens of the United States and all other able-bodied males who have or shall have declared their intention to become citizens of the United States, who shall be more than eighteen years of age and, except as hereinafter provided, not more than forty-five years of age, and the militia shall be divided into three classes: the national guard, the naval militia, and the unorganized militia.

1917, c. 200, s. 1.

6792. Composition of national guard. The national guard shall consist of the regularly enlisted militia between the ages of eighteen and forty-five years, organized, armed, and equipped as hereinafter provided, and of commissioned officers between the ages of twenty-one and sixty-four years.

1917, c. 200, s. 2.

6793. Composition of naval militia. The naval militia shall consist of the regularly enlisted militia between the ages of eighteen and forty-five years, organized, armed, and equipped as hereinafter provided, and commissioned officers between the ages of twenty-one and sixty-two years (naval branch), and twenty-one and sixty-four years (marine corps branch); but enlisted men may continue in the service after the age of forty-five years, and until the age of sixty-two years (naval branch), or sixty-four years (marine corps branch), provided the service is continuous.

1917, c. 200, s. 3.

See *Winslow v. Morton*, 118-486.

6794. Composition of unorganized militia. The unorganized militia shall consist of all other able-bodied male citizens of the state and all other able-bodied males who have or shall have declared their intention to become citizens of the United States, who shall be more than eighteen years of age, and, except as otherwise provided by law, not more than forty-five years of age.

1917, c. 200, s. 4.

6795. Exemption from military duty. The officers, judicial and executive, of the government of the United States and of the state of North Carolina, persons in

the military or naval service of the United States, custom-house clerks, persons employed by the United States in the transmission of the mail, artificers and workmen employed in the armories, arsenals, and navy yards of the United States, pilots, mariners actually employed in the sea service of any citizen or merchant within the United States, shall be exempt from military duty without regard to age, and all persons who, because of religious belief, shall claim exemption from military service, if the conscientious holding of such belief by such person shall be established under such regulations as the president shall prescribe, shall be exempted from militia service in a combatant capacity; but no person so exempted shall be exempt from militia service in any capacity that the president shall declare to be noncombatant.

1917, c. 200, s. 5.

6796. White and colored enrolled separately. The white and colored militia shall be separately enrolled, and shall never be compelled to serve in the same organization. No organization of colored troops shall be permitted where white troops are available, and while permitted to be organized, colored troops shall be under command of white officers.

1917, c. 200, s. 6.

6797. Maintenance of other troops. In time of peace the state shall maintain only such troops as may be authorized by the president of the United States; but nothing contained in this chapter shall be construed as limiting the rights of the state in the use of the national guard within its borders in time of peace. Nothing contained in this chapter shall prevent the organization and maintenance of state police or constabulary.

1917, c. 200, s. 8.

6798. Corps entitled to retain privileges. Any corps of artillery, cavalry, or infantry existing in the state on the passage of the act of congress of May eighth, one thousand seven hundred and ninety-two, which by the laws, customs, or usages of the state has been in continuous existence since the passage of such act, under its provisions and under the provisions of section two hundred and thirty-two and sections one thousand six hundred and twenty-five to one thousand six hundred and sixty, both inclusive, of title sixteen of the revised statutes of one thousand eight hundred and seventy-three and the act of congress of January twenty-first, one thousand nine hundred and three, relating to the militia, shall be allowed to retain its ancient privileges, subject, nevertheless, to all duties required by law of the militia; but such organizations may be a part of the national guard, and entitled to all the privileges of this chapter, and shall conform in all respects to the organization, discipline, and training of the national guard in time of war. For purposes of training and when on active duty in the service of the United States they may be assigned to higher units, as the president may direct, and shall be subject to the orders of officers under whom they shall be serving.

1917, c. 200, s. 87.

ART. 2. GENERAL ADMINISTRATIVE OFFICERS

6799. Governor as commander-in-chief. The governor shall be commander-in-chief, and shall have power to call out the militia to execute the law, suppress riots or insurrections, and to repel invasions.

1917, c. 200, s. 11.

Const., Art. 12, s. 3; 1907, c. 316. For powers of governor as commander-in-chief, see *Winslow v. Morton*, 118-486; *Worth, Treas., v. Comrs.*, 118-112.

For power of president of United States over state militia, see *Winslow v. Morton*, 118-486.

6800. Commander-in-chief to prescribe regulations. The commander-in-chief shall have the power and it shall be his duty from time to time to issue such orders and to prescribe such regulations relating to the organization of the national guard and naval militia as will cause the same at all times to conform to the federal requirements of the United States government relating thereto.

1917, c. 200, s. 36.

6801. Division of military staff. The military staff shall be divided into two kinds: the personal staff of the governor and the administrative staff. The governor may detail from the active list not more than ten national guard officers and two naval militia officers, who shall in addition to their regular duties perform the duties of aides-de-camp on the personal staff of the governor. There shall be an administrative staff which shall be as is now or may from time to time be authorized by the secretary of war for the national guard and the secretary of the navy for the naval militia.

1917, c. 200, s. 12.

6802. Adjutant general. The governor shall appoint an adjutant general, who shall have had not less than five years commissioned service in the national guard, naval militia, regular army, United States navy or marine corps; but while holding such office the adjutant general shall not be a member of the active national guard or naval militia.

1917, c. 200, s. 14.

6803. Adjutant general's department. There shall be an adjutant general's department. The adjutant general shall be the head of the department and as such subordinate only to the governor in matters pertaining thereto. He shall make such returns and reports to the secretary of war and secretary of the navy or to such officers as the secretary of war and secretary of the navy may designate, at such times and in such form as may from time to time be prescribed. He shall keep a record of all officers and enlisted men, and shall also keep in his office all records and papers required by law or regulations to be filed therein. He shall make an annual report to the governor on or before the thirty-first day of December of each year, including a detailed statement of all expenditures made for military purposes during that year. He shall also make a biennial report to the general assembly. He shall cause the military laws, the regulations governing the national guard and naval militia, and the articles of war and articles for the government of the navy to be printed, indexed, and bound in proper and compact form and distributed to the commissioned officers of the state at the rate of one copy for each officer. He shall cause to be prepared and

issued all books, blank forms, etc., required to carry into full effect the provisions of this statute. All such books and blank forms shall be and remain the property of the state. The adjutant general shall perform such other duties not herein specified as may be required by the military laws and regulations or by the governor. The adjutant general shall be allowed all such necessary expenses as may be incurred for printing, postage, stationery, blank books, orders, and reports required in his office, the same to constitute a charge against the general fund. The adjutant general may have an assistant who shall be detailed from the adjutant general's department of the administrative staff, and such clerks and employees as may be prescribed by the governor. An officer detailed as such assistant shall receive during the period of such service such compensation as may be authorized by the governor. The pay of such officer shall constitute a charge against the whole sum appropriated annually for the support of the national guard.

1917, c. 200, s. 13.

6804. Property and disbursing officer for the United States. The governor of the state shall appoint, designate, or detail, subject to the approval of the secretary of war, an officer of the national guard of the state, who shall be regarded as property and disbursing officer for the United States. In consideration of his services, for the care, responsibility, and issue of federal property, the property and disbursing officer for the United States shall receive from the state such salary as the governor may authorize to be just and proper; the salary to constitute a charge upon the military fund of the state; but such salary shall in no case exceed the sum of one thousand dollars. When ordered into actual service and receiving the pay of his rank for such service, from either state or federal funds, he shall not be entitled to, or receive, any salary from the state for the period of time for which he shall receive the pay of his rank.

1917, c. 200, s. 24.

6805. Property and disbursing officer for North Carolina. The governor shall appoint, designate, or detail an officer, active or retired, of the national guard or naval militia, who shall be the property and disbursing officer for the state. He shall receipt for and account for all funds and all property belonging to the state for military purposes, and shall make such returns and reports concerning the same as may be required by the governor. The state treasurer is authorized, on the requisition of the governor, to pay to the property and disbursing officer so much of the annual appropriation for the national guard as shall, in the judgment of the governor, be necessary for the purposes enumerated herein. The disbursing officer shall render through the adjutant general such accounts of state funds entrusted to him for disbursement as may be required by the state treasurer. Before entering upon the performance of his duties as property and disbursing officer he shall be required to give a good and sufficient bond to the state, the amount thereof to be determined by the governor, for the faithful performance of his duties and for the safe-keeping and proper disposition of the state property and funds entrusted to his care. He shall, after having qualified as property and disbursing officer, receive pay for his services at the rate of one thousand dollars per annum, and such compensation shall be a charge against the whole sum annually appropriated for the support of the national guard. All

payments made by the property and disbursing officer for the state must first have the approval of the adjutant general, and be made upon such forms and under such rules as may be prescribed by the proper authority. All necessary blank forms, books, stationery, etc., for the use of the property and disbursing officer shall be furnished by the adjutant general's department.

1917, c. 200, s. 25.

6806. Inspector general. The inspector general shall annually inspect all organizations and departments in the militia at such times and places as the governor may order, and inspect and audit the accounts of all officers accountable or responsible for public funds; he will inquire as to the necessity, economy, and propriety of all disbursements, their strict conformity to the law appropriating the money, and whether the property and disbursing officer complies with the law in keeping his accounts and making his deposits. He shall make an annual report to the governor of such audits and inspections, a copy of them to be furnished the advisory board.

1917, c. 200, s. 26.

6807. Advisory board. There shall be an advisory board composed of the brigade commander, the commanding officer of each regiment of infantry, the commanding officer of the naval militia, the commanding officer of the coast artillery corps, the chief surgeon, and the senior officer of engineers, and senior officer of cavalry, which shall meet once each year in Raleigh at such time as ordered by the governor, and at such other times and places as may be ordered by the governor. This board shall make such recommendations to the governor as it may deem for the best interests of the militia. The adjutant general, the property and disbursing officers, and the inspector general shall furnish such information as may be requested by the board.

1917, c. 200, s. 27.

ART. 3. NATIONAL GUARD

6808. Organization of national guard units. Except as otherwise specifically provided by the laws of the United States, the organization of the national guard, including the composition of all units thereof, shall be the same as that which is or may hereafter be prescribed for the regular army, subject in time of peace to such general exceptions as may be authorized by the secretary of war.

1917, c. 200, s. 7.

6809. Location of units. The governor shall determine and fix the location of the units and headquarters of the national guard within the state; but no organization of the national guard, members of which shall be entitled to and shall have received compensation under the provisions of the act of congress approved June third, one thousand nine hundred and sixteen, shall be disbanded without the consent of the president, nor without such consent shall the commissioned or enlisted strength of any such organization be reduced below the minimum that is now or shall be hereafter prescribed therefor by the president.

1917, c. 200, s. 9.

6810. Reserve battalions for recruit training. Under such rules and regulations as may be prescribed by the president, reserve battalions for infantry, cavalry,

field artillery, and coast artillery may be organized by the commander-in-chief when organizations of the national guard have been called into the service of the United States in time of war. The organization of such reserve battalions shall be effected in the manner prescribed in section seventy-nine of the act of congress approved June third, one thousand nine hundred and sixteen, or subsequent federal enactments.

1917, c. 200, s. 10.

6811. Officers appointed and commissioned. All officers of the national guard shall be appointed and commissioned by the governor as follows, viz.:

1. The appointment and promotion of all officers below the grade of brigadier general shall be by seniority within the organization or department; but if the total commissioned service of the senior officer is less than the total commissioned service of the next ranking officer, the names of both officers shall be forwarded to the war department, and promotion shall be based upon the result of the prescribed examination.

2. Original appointments of second lieutenants in the line or staff shall be made from the enlisted men within the organization. Candidates for such appointment shall make written application, accompanied by their military record, to the commanding officer through intermediate commanders for comment by endorsements. The commanding officer shall forward the application of the three best qualified and most promising candidates with his endorsement to the adjutant general's office for consideration by the governor.

1917, c. 200, s. 15.

6812. Commissions for commandants and student officers at educational institutions. The governor of the state is authorized to issue to the commandants or directors of military training at the university of North Carolina, agricultural and engineering college, North Carolina school for the deaf, at Morganton, and other colleges and schools of the state giving a military course, commissions with rank not to exceed major in the North Carolina reserve militia, and to issue to the student officers of the institutions herein named commissions with the rank not to exceed captain in the North Carolina reserve militia. The persons to whom commissions are issued under this section shall be known as cadet officers, and they shall have no connection with the national guard or other military forces of the state, nor shall they, or any of them, exercise any military authority other than in the discharge of their duties in their respective institutions.

1919, c. 265, ss. 1, 2, 3.

6813. Appointment of staff officers. No person shall be appointed a staff officer, including officers of the pay, inspection, subsistence, and medical departments, unless he shall have had previous military experience, nor who shall fail to qualify as to fitness for military service under such regulations as the secretary of war shall prescribe; such officers shall hold their positions until they have reached the age of sixty-four years, unless separated from the service prior to that time by reason of resignation, disability, or for cause to be determined by a court-martial legally convened for the purpose. Vacancies among such officers shall be filled by appointment from the officers of the militia.

1917, c. 200, s. 16.

6814. Qualifications of national guard officers. Persons hereinafter commissioned as officers of the national guard shall not be recognized as such under any of the provisions of this chapter unless they shall have been selected from the following classes and shall have taken and subscribed to the oath of office prescribed in this article for officers: Officers or enlisted men of the national guard, officers active or retired, and former officers of the United States army, navy, and marine corps, graduates of the United States military and naval academies and graduates of schools, colleges, and universities where military science is taught under the supervision of an officer of the regular army, and, for the technical branches and staff corps or departments, such other civilians as may be especially qualified for duty therein.

1917, c. 200, s. 17.

6815. Test as to fitness for officers. No person shall hereafter be appointed an officer of the national guard unless he first shall have successfully passed such tests as to his physical, moral, and professional fitness as the president shall prescribe. The examination to determine such qualifications for commission shall be conducted by a board of three commissioned officers appointed by the secretary of war from the regular army or the national guard, or both.

1917, c. 200, s. 18.

6816. Rank according to date of commission. Commissioned officers shall take rank according to the date of their commissions. The date of appointment of an officer shall be expressed in his commission, and be considered as the date thereof. When two commissions bear the same date the officer who has had priority of rank in any lower grade shall have precedence; and if the officers have not served in a lower grade, the commander-in-chief shall designate their respective ranks. Whenever an officer shall be recommissioned in the same or lower grade than that in which he has served, his new commission shall bear such date as will give credit for time actually served under former commission.

1917, c. 200, s. 19.

6817. Oath of national guard officers. Commissioned officers of the national guard shall take and subscribe to the following oath of office: "I,....., do solemnly swear that I will support and defend the constitution of the United States and the constitution of the state of North Carolina against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will obey the orders of the president of the United States and of the governor of the state of North Carolina; that I make this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office of..... in the national guard of the United States and of the state of North Carolina, upon which I am about to enter: so help me, God."

1917, c. 200, s. 20.

6818. Elimination and disposition of officers. At any time the moral character, capacity, and general fitness for the service of any national guard officer may be determined by an efficiency board of three commissioned officers senior in rank to the officer whose fitness for service shall be under investigation, and if the findings of such board be unfavorable to such officer and be approved by the

official authorized to appoint such officer, he shall be discharged. Commissions of officers of the national guard may be vacated upon resignation, absence without leave for three months, upon the recommendation of an efficiency board, or pursuant to sentence of a court-martial. Officers of such guard rendered surplus by disbandment of their organization shall be placed in the national guard reserve. Officers may, upon their own application, be placed in the reserve.

1917, c. 200, s. 28.

6819. Retirement of officers. When an officer reaches the age of sixty-four years he shall be retired.

1917, c. 200, s. 29.

6820. Enlistments in national guard. Hereafter the period of enlistment in the national guard shall be for six years, the first three years of which shall be in an active organization and the remaining three years in the national guard reserve, and the qualifications for enlistment shall be the same as those prescribed for admission to the regular army; but in the national guard the privilege of continuing in active service during the whole of an enlistment period and of re-enlisting in the said service shall not be denied by reason of anything contained in this chapter.

1917, c. 200, s. 30.

6821. Enlistment contract. Enlisted men shall not be recognized as members of the national guard until they shall have signed an enlistment contract and taken and subscribed to the following oath of enlistment: "I do hereby acknowledge to have voluntarily enlisted, this day of, 19....., as a soldier in the national guard of the United States and of the state of North Carolina, for the period of three years in service and three years in the reserve, under the conditions prescribed by law, unless sooner discharged by proper authority. And I do solemnly swear that I will bear true faith and allegiance to the United States of America, and to the state of North Carolina, and that I will serve them honestly and faithfully against all their enemies whomsoever, and that I will obey the orders of the president of the United States and of the governor of the state of North Carolina, and of the officers appointed over me according to law and the rules and articles of war."

1917, c. 200, s. 31.

6822. Discharge of enlisted men. An enlisted man discharged from service in the national guard shall receive a discharge in writing in such form and with such classification as is or shall be prescribed for the regular army, and in time of peace discharges may be given prior to the expiration of terms of enlistment under such regulations as may be prescribed by proper authority.

1917, c. 200, s. 32.

6823. Discipline of national guard. The discipline of the national guard shall conform to the system which is now or may hereafter be prescribed for the regular army, and the training shall be carried out so as to conform to the provisions of an act of congress approved June third, one thousand nine hundred and sixteen, and subsequent federal enactments.

1917, c. 200, s. 33.

6824. Uniform and equipment of national guard. The national guard shall, as far as practicable, be uniformed, armed, and equipped with the same type of uniforms, arms, and equipment as is or shall be provided for the regular army.
1917, c. 200, s. 37.

6825. Courts-martial for national guard. Courts-martial for organizations of the national guard not in the service of the United States shall be of three kinds, namely, general courts-martial, special courts-martial, and summary courts-martial. They shall be constituted, have cognizance of the same subjects, and possess like powers, except as to punishments, as similar courts provided for by the law and regulations governing the army of the United States, and the proceedings of courts-martial of the national guard shall follow the forms and modes of procedure prescribed for such similar courts.
1917, c. 200, s. 55.

6826. General courts-martial. General courts-martial of the national guard not in the service of the United States may be convened by orders of the president, or of the governor of the state, and such courts shall have the power to impose fines not exceeding two hundred dollars; sentence to forfeiture of pay and allowances; to a reprimand; to dismissal or dishonorable discharge from the service; to reduction of noncommissioned officers to the ranks; or any two or more of such punishments may be combined in the sentences imposed by such courts.
1917, c. 200, s. 56.

6827. Special courts-martial. In the national guard, not in the service of the United States, the commanding officer of each garrison, fort, post, camp, or other place, brigade, regiment, detached battalion, or other detached command, may appoint special courts-martial for his command; but such special courts-martial may in any case be appointed by superior authority when by the latter deemed desirable. Special courts-martial shall have power to try any person subject to military law, except a commissioned officer, for any crime or offense made punishable by the military laws of the United States; and such special courts-martial shall have the same powers of punishment as the general courts-martial, except that fines imposed by such courts shall not exceed one hundred dollars.
1917, c. 200, s. 57.

6828. Summary courts-martial. In the national guard, not in the service of the United States, the commanding officer of each garrison, fort, post, or other place, regiment, or corps, detached battalion, company, or other detachment of the national guard, may appoint for such place or command a summary court to consist of one officer, who shall have power to administer oaths and try the enlisted men of such place or command for breaches of discipline and violations of laws governing such organizations; and the court, when satisfied of the guilt of such soldier, may impose fines not exceeding twenty-five dollars for any single offense; may sentence noncommissioned officers to reduction to the ranks; may sentence to forfeiture of pay and allowances. The proceedings of such court shall be informal, and the minutes thereof shall be the same as prescribed for summary courts of the army of the United States.
1917, c. 200, s. 58.

6829. Powers of courts-martial. All courts-martial of the national guard, not in the service of the United States, including summary courts, shall have power to sentence to confinement in lieu of fines authorized to be imposed, and shall have power to direct that upon the nonpayment of a fine the person convicted shall be confined in any county jail; but such sentences of confinement shall not exceed one day for each dollar of fine authorized.

1917, c. 200, s. 59.

6830. Procedure of courts-martial. In the national guard, not in the service of the United States, presidents of courts-martial and summary court officers shall have power to issue warrants to arrest accused persons and to bring them before the court for trial whenever such persons shall have disobeyed an order in writing from the convening authority to appear before such court, a copy of the charge or charges having been delivered to the accused with such order, and to issue commitments in carrying out sentences of confinement, and to issue subpoenas and subpoenas duces tecum, and to enforce by attachment attendance of witnesses and the production of books and papers, and to sentence for a refusal to be sworn or to answer as provided in actions before civil courts. He shall also have power to punish for contempt occurring in the presence of the court.

1917, c. 200, s. 60.

6831. Manual of courts-martial. Trials and proceedings by all courts and boards shall be in accordance with the plan and procedure laid down in the manual of courts-martial, courts of inquiry, and retiring boards, and other procedures under military law, as may from time to time be prescribed by the secretary of war.

1917, c. 200, s. 64.

6832. Sentences, where executed. All sentences to confinement imposed by any military court of this state shall be executed in such prisons as the court may designate.

1917, c. 200, s. 61.

6833. Execution of process and sentences. All processes and sentences of any of the military courts of this state shall be executed by any sheriff, deputy sheriff, constable, or police officer into whose hands the same may be placed for service or execution, and such officer shall make return thereof to the officer issuing or imposing the same. Such service or execution of process or sentence shall be made by such officer without tender or advancement of fee therefor; but all costs in such cases shall be paid from funds appropriated for military purposes. The actual necessary expenses of conveying a prisoner from one county in the state to another, when the same is authorized and directed by the adjutant general of the state, shall be paid from the military fund of the state upon a warrant approved by the adjutant general.

1917, c. 200, s. 62.

6834. Commitments. When any sentence to fine or imprisonment shall be imposed by any military court of this state, it shall be the duty of the president of said court, or summary court officer, upon the approval of the findings and sen-

tence of such court, to make out and sign a certificate entitling the case, giving the name of the accused, the date and place of trial, the date of approval of sentence, the amount of fine, or manner, place, and duration of confinement, and deliver such certificate to the sheriff, or deputy sheriff, constable, or police officer of the county wherein the sentence is to be executed; and it shall thereupon be the duty of such officer to carry said sentence into execution in the manner prescribed by law for the collection of fines or commitment to service of terms of imprisonment in criminal cases determined in the courts of this state.

1917, c. 200, s. 63.

6835. Sentence of dismissal. No sentence of dismissal from the service or dishonorable discharge, imposed by a national guard court-martial not in the service of the United States, shall be executed until approved by the governor. Any officer convicted by a general court-martial and dismissed from the service shall be forever disqualified from holding a commission in the militia.

1917, c. 200, s. 65.

ART. 4. NAVAL MILITIA

6836. Organization and equipment. The organization of the naval militia shall be units of convenient size, in each of which the number and rank of officers and the distribution of the total enlisted strength among the several ratings of petty officers and other enlisted men shall be such as are prescribed by the secretary of the navy, who may also prescribe the number of officers and the number of petty officers and other enlisted men required for the organization of such units into larger bodies for administrative and other purposes, and the arms and equipment of the naval militia shall be those which are now or may hereafter be prescribed by the secretary of the navy.

1917, c. 200, s. 66.

6837. Officers appointed to naval militia. Officers of the United States navy and marine corps may, with the approval of the secretary of the navy, be elected or appointed and commissioned as officers of the naval militia.

1917, c. 200, s. 67.

6838. Officers assigned to duty. Line officers of the naval militia may be for line duties only, for engineering duties only, or for aeronautic duties only.

1917, c. 200, s. 68.

6839. Discipline in naval militia. The naval militia shall be subject to the system of discipline prescribed for the United States navy and marine corps, and the commanding officer of a naval militia battalion or brigade, or a naval militia officer in command of naval militia forces on shore or on any vessel of the navy loaned to the state, or on any vessel on which such forces are training, whether within or without the state, or wherever, either within or without the state, naval militia forces of the state shall be assembled pursuant to orders, shall have power without trial by courts-martial to impose upon members of the naval militia the punishments which the commanding officer of a vessel of the navy is authorized by law to impose.

1917, c. 200, s. 69.

6840. Disbursing and accounting officer. The governor shall appoint a disbursing officer, approved by and of such rank as may be prescribed by the secretary of the navy, to perform such duties as the secretary of the navy may prescribe. The governor shall also appoint the above described disbursing officer, or such other officer of the pay corps of the naval militia as he may elect, as accounting officer for each battalion thereof, or at his option for each larger unit or combination of units of the same, who shall be responsible for the proper accounting for all public property issued to and for the use of such battalion or larger unit or combination of units.

1917, c. 200, s. 70.

6841. Rendition of accounts. Accounting officers shall render accounts as prescribed by the governor or by the secretary of the navy, and shall be required to give good and sufficient bond to the state and to the United States, in such sums as the governor or the secretary of the navy may direct, and conditioned upon the faithful accounting for all public property and for the safe-keeping of such part thereof as may be in the personal custody of such officer. Accounting officers may issue any or all such property to other officers or enlisted men of the naval militia under such rules and regulations as may be prescribed.

1917, c. 200, s. 71.

6842. Disbandment of naval militia. No part of the naval militia which is entitled to compensation under the provisions of an act of congress approved August twenty-ninth, one thousand nine hundred and sixteen, shall be disbanded without the consent of the president.

1917, c. 200, s. 86.

6843. Courts-martial for naval militia. Courts-martial in the naval militia shall consist of general courts-martial, summary courts-martial, and deck courts.

1917, c. 200, s. 72.

6844. General courts-martial. General courts-martial shall consist of not less than three nor more than thirteen officers, and may be convened by order of the governor.

1917, c. 200, s. 73.

6845. Summary courts-martial. Summary courts-martial may be ordered by the governor, or by the commanding officers of a naval militia battalion or brigade.

1917, c. 200, s. 74.

6846. Deck courts. Deck courts may be ordered by the commanding officer of a naval militia battalion or brigade, or by a naval militia officer in command of naval militia forces on shore or on any vessel loaned to the state or on any vessel on which said forces may be serving.

1917, c. 200, s. 75.

6847. Jurisdiction and procedure of courts-martial and deck courts. The above courts-martial and deck courts herein provided for shall be constituted and have cognizance of the same subjects, and possess like powers, except as to punish-

tence of such court, to make out and sign a certificate entitling the case, giving the name of the accused, the date and place of trial, the date of approval of sentence, the amount of fine, or manner, place, and duration of confinement, and deliver such certificate to the sheriff, or deputy sheriff, constable, or police officer of the county wherein the sentence is to be executed; and it shall thereupon be the duty of such officer to carry said sentence into execution in the manner prescribed by law for the collection of fines or commitment to service of terms of imprisonment in criminal cases determined in the courts of this state.

1917, c. 200, s. 63.

6835. Sentence of dismissal. No sentence of dismissal from the service or dishonorable discharge, imposed by a national guard court-martial not in the service of the United States, shall be executed until approved by the governor. Any officer convicted by a general court-martial and dismissed from the service shall be forever disqualified from holding a commission in the militia.

1917, c. 200, s. 65.

ART. 4. NAVAL MILITIA

6836. Organization and equipment. The organization of the naval militia shall be units of convenient size, in each of which the number and rank of officers and the distribution of the total enlisted strength among the several ratings of petty officers and other enlisted men shall be such as are prescribed by the secretary of the navy, who may also prescribe the number of officers and the number of petty officers and other enlisted men required for the organization of such units into larger bodies for administrative and other purposes, and the arms and equipment of the naval militia shall be those which are now or may hereafter be prescribed by the secretary of the navy.

1917, c. 200, s. 66.

6837. Officers appointed to naval militia. Officers of the United States navy and marine corps may, with the approval of the secretary of the navy, be elected or appointed and commissioned as officers of the naval militia.

1917, c. 200, s. 67.

6838. Officers assigned to duty. Line officers of the naval militia may be for line duties only, for engineering duties only, or for aeronautic duties only.

1917, c. 200, s. 68.

6839. Discipline in naval militia. The naval militia shall be subject to the system of discipline prescribed for the United States navy and marine corps, and the commanding officer of a naval militia battalion or brigade, or a naval militia officer in command of naval militia forces on shore or on any vessel of the navy loaned to the state, or on any vessel on which such forces are training, whether within or without the state, or wherever, either within or without the state, naval militia forces of the state shall be assembled pursuant to orders, shall have power without trial by courts-martial to impose upon members of the naval militia the punishments which the commanding officer of a vessel of the navy is authorized by law to impose.

1917, c. 200, s. 69.

6840. Disbursing and accounting officer. The governor shall appoint a disbursing officer, approved by and of such rank as may be prescribed by the secretary of the navy, to perform such duties as the secretary of the navy may prescribe. The governor shall also appoint the above described disbursing officer, or such other officer of the pay corps of the naval militia as he may elect, as accounting officer for each battalion thereof, or at his option for each larger unit or combination of units of the same, who shall be responsible for the proper accounting for all public property issued to and for the use of such battalion or larger unit or combination of units.

1917, c. 200, s. 70.

6841. Rendition of accounts. Accounting officers shall render accounts as prescribed by the governor or by the secretary of the navy, and shall be required to give good and sufficient bond to the state and to the United States, in such sums as the governor or the secretary of the navy may direct, and conditioned upon the faithful accounting for all public property and for the safe-keeping of such part thereof as may be in the personal custody of such officer. Accounting officers may issue any or all such property to other officers or enlisted men of the naval militia under such rules and regulations as may be prescribed.

1917, c. 200, s. 71.

6842. Disbandment of naval militia. No part of the naval militia which is entitled to compensation under the provisions of an act of congress approved August twenty-ninth, one thousand nine hundred and sixteen, shall be disbanded without the consent of the president.

1917, c. 200, s. 86.

6843. Courts-martial for naval militia. Courts-martial in the naval militia shall consist of general courts-martial, summary courts-martial, and deck courts.

1917, c. 200, s. 72.

6844. General courts-martial. General courts-martial shall consist of not less than three nor more than thirteen officers, and may be convened by order of the governor.

1917, c. 200, s. 73.

6845. Summary courts-martial. Summary courts-martial may be ordered by the governor, or by the commanding officers of a naval militia battalion or brigade.

1917, c. 200, s. 74.

6846. Deck courts. Deck courts may be ordered by the commanding officer of a naval militia battalion or brigade, or by a naval militia officer in command of naval militia forces on shore or on any vessel loaned to the state or on any vessel on which said forces may be serving.

1917, c. 200, s. 75.

6847. Jurisdiction and procedure of courts-martial and deck courts. The above courts-martial and deck courts herein provided for shall be constituted and have cognizance of the same subjects, and possess like powers, except as to punish-

ments, as similar courts-martial provided for in the navy of the United States; and the proceedings of courts-martial of the naval militia shall follow the forms and modes of procedure prescribed for such courts in the navy of the United States.

1917, c. 200, s. 76.

6848. Place of holding courts. Every precept or order for the convening of any such court may authorize the court to sit at any place or places within the territorial limits of the state as the convening authority may designate, and may further provide that any such court may be convened and sit on board any such naval or other vessel, wherever the same from time to time happens to be, or at such place or places ashore, outside the territorial limits referred to above, as in the judgment of the said convening authority may be convenient or desirable for the purposes of such court-martial.

1917, c. 200, s. 77.

6849. Powers of general courts-martial. General courts-martial shall have power to impose fines not exceeding two hundred dollars, to sentence to forfeiture of pay and allowances, to a reprimand, to dismissal or dishonorable discharge from the service, to reduction in rank or rating; or any two or more of such punishments may be combined in the sentences imposed by such courts.

1917, c. 200, s. 78.

6850. Powers of summary courts-martial. Summary courts-martial shall have the same powers of punishment as general courts-martial, except that fines imposed by summary courts-martial shall not exceed one hundred dollars.

1917, c. 200, s. 79.

6851. Powers of deck courts. Deck courts may impose fines not exceeding fifty dollars for any single offense; may sentence enlisted men to reduction in rank or rating, to forfeiture of pay and allowances, to a reprimand, to discharge with other than dishonorable discharge, or a fine in addition to any one of the other sentences specified.

1917, c. 200, s. 80.

6852. Process of courts-martial. Presidents of general courts-martial, senior members of summary courts-martial, and deck court officers of the naval militia shall have the power to issue warrants to arrest accused persons, and to bring them before the court for trial whenever such persons have disobeyed an order in writing from the convening authority to appear before such court, a copy of the charge or charges having been delivered to the accused with such order, and to issue commitments in carrying out sentences of confinement, and to issue subpoenas and subpoenas duces tecum, and to enforce by attachment attendance of witnesses and the production of books and papers, and to sentence for a refusal to be sworn or to answer, all as authorized for similar proceedings for courts-martial in the navy of the United States. He shall also have power to punish for contempt occurring in the presence of the court. All processes, warrants, and

sentences of such courts shall be executed by any sheriff or deputy sheriff or any constable or police officer of any township, county, city, or town, who shall be authorized by law to execute or serve any civil or criminal process.

1917, c. 200, s. 83.

6853. Sentence to confinement in lieu of fines. All courts-martial of the naval militia, including deck courts, shall have the power to sentence to confinement in lieu of fines authorized to be imposed, and shall have the power to direct that upon nonpayment of a fine the person convicted shall be confined in any county jail; but such sentences to confinement shall not exceed one day for each dollar of fine authorized. When naval militia forces are embarked on any vessel, the confinement in whole or in part may be had in prisons provided on said ship.

1917, c. 200, s. 81.

6854. Dismissal or dishonorable discharge. No sentence of dismissal or dishonorable discharge from the naval militia shall, except when the naval militia shall have been called into the service of the United States, be executed without the approval of the governor.

1917, c. 200, s. 82.

6855. Collection of fines. The amount of any fine imposed under sentence of the courts heretofore named on any member of the naval militia may be collected from him, or may be deducted from any amount due said member as accrued pay.

1917, c. 200, s. 84.

6856. Courts of inquiry. Courts of inquiry in the naval militia shall be instituted, constituted, and conducted in the same manner and shall have like powers and duties as similar courts in the navy of the United States, except that they shall be ordered by the governor.

1917, c. 200, s. 85.

ART. 5. REGULATIONS AS TO ACTIVE SERVICE

6857. National guard and naval militia first ordered out. In all cases the national guard and naval militia as provided for in this chapter shall be first ordered into service.

1917, c. 200, s. 44.

6858. Regulations enforced on actual service. Whenever any portion of the militia shall be called into service to execute the law, suppress riot or insurrection, or to repel invasion, the articles of war, and articles for the government of the navy, governing the army and navy of the United States, and the regulations prescribed for the army and navy of the United States, and the regulations issued thereunder, shall be enforced and regarded as a part of this chapter until said forces shall be duly relieved from such duty. As to offenses committed when such articles of war and articles for the government of the navy are so in force, courts-martial shall possess, in addition to the jurisdiction and power of sentence and punishment herein vested in them, all additional jurisdiction and power of sentence and punishment exercisable by like courts under such articles of war and articles for the government of the navy or regulations or laws governing the

United States army and navy or the customs and usages thereof; but no punishment under such rules and articles which will extend to the taking of life shall in any case be inflicted except in time of war, invasion, or insurrection, declared by a proclamation of the governor to exist, and then only after approval by the governor of the sentence inflicting such punishment. Imprisonment other than in guardhouse shall be executed in county jails or other prisons designated by the governor for that purpose.

1917, c. 200, s. 45.

6859. Regulations governing unorganized militia. Whenever any part of the unorganized militia is ordered out, it shall be governed by the same rules and regulations and be subject to the same penalties as the national guard or naval militia.

1917, c. 200, s. 35.

ART. 6. UNORGANIZED MILITIA

6860. Unorganized militia ordered out for service. The commander-in-chief may at any time, in order to execute the law, suppress riots or insurrections, or repel invasions, in addition to the national guard, the national guard reserve, and the naval militia, order out the whole or any part of the unorganized militia. When the militia of this state or a part thereof is called forth under the constitution and laws of the United States, the governor shall first order out for service the national guard or naval militia, or such part thereof as may be necessary, and if the number available be insufficient, he shall then order out such a part of the unorganized militia as he may deem necessary. During the absence of organizations of the national guard or naval militia in the service of the United States, their state designations shall not be given to new organizations.

1917, c. 200, s. 46.

6861. Manner of ordering out unorganized militia. The governor shall, when ordering out the unorganized militia, designate the number. He may order them out either by calling for volunteers or by draft. He may attach them to the several organizations of the national guard or naval militia, or organize them into separate brigades, regiments, battalions, companies, separate corps, batteries, troops, or divisions, as may be best for the service.

1917, c. 200, s. 47.

6862. Draft of unorganized militia. If the unorganized militia is ordered out by draft, the governor shall designate the persons in each county to make the draft, and prescribe rules and regulations for conducting the same.

1917, c. 200, s. 48.

6863. Punishment for failure to appear. Every member of the militia ordered out for duty, or who shall volunteer or be drafted, who does not appear at the time and place ordered, shall be liable to such punishment as a court-martial may determine.

1917, c. 200, s. 49.

ART. 7. PAY OF MILITIA

6864. Rations and pay on service. The militia of the state, both officers and enlisted men, when called into the service of the state, shall be rationed and receive the same pay as when called into the service of the United States. When called in aid of the civil authorities, enlisted men shall receive in addition to such pay the sum of sixty cents per day.

1917, c. 200, s. 50.

Rev., s. 4856; Code, s. 3248; R. C., c. 70, s. 84; 1813, c. 850, s. 5; 1907, c. 316; 1917, c. 200, s. 50. See *Comrs. v. Comrs.*, 75-240; *Worth, Treas., v. Comrs.*, 118-112.

6865. Rate of pay for service. The governor may, whenever the public service requires it, order upon special or regular duty any officer or enlisted man of the national guard or naval militia, and the expenses and compensation therefor of such officer and enlisted man shall be paid upon the approval of the governor and warrant of the auditor. Such officer and enlisted man shall receive the same pay as officers and enlisted men of the same grade and like service of the regular army or navy; but officers when on duty in connection with examining boards, efficiency boards, advisory boards, general or special courts-martial and courts of inquiry, shall be allowed actual expenses and four dollars per diem for such duty. No staff officer who receives a salary from the state as such shall be entitled to any additional compensation other than actual and necessary expenses incurred while traveling upon orders issued by the proper authority.

1917, c. 200, s. 51.

6866. Paid by the state. When the militia or any portion thereof shall be called into service to execute the law, suppress riots or insurrections, and to repel invasions, the pay, subsistence, transportation, and other necessary expenses incident thereto shall be paid by the state treasurer, upon the approval of the governor and warrant of the auditor.

1917, c. 200, s. 52.

For former law, see Rev., s. 4857; Code, s. 3247; 1869-70, c. 164, s. 3; 1907, c. 316. See *Comrs. v. Comrs.*, 75-240; *Worth, Treas., v. Comrs.*, 118-112.

6867. Pay of general and field officers. General and field officers when away from their home stations visiting the organizations of their commands, for inspection and instruction under orders from proper authority, shall receive actual necessary expenses and the pay of their rank.

1917, c. 200, s. 53.

6868. Pay and care of soldiers injured in service. A member of the national guard and naval militia who shall, when on duty or assembled therefor in case of riot, tumult, breach of peace, insurrection, or invasion, or to repel invasion or in aid of the civil authorities, receive any injury, or incur or contract any disability or disease, by reason of such duty or assembly therefor, or who shall without fault or neglect on his part be wounded or disabled while in line of duty, which shall temporarily incapacitate him from pursuing his usual business or occupation, shall during the period of such incapacity receive the actual neces-

sary expenses for care and medicine and medical attendance, to be paid out of the state treasury from funds not otherwise appropriated, upon order of the governor and warrant of the auditor.

1917, c. 200, s. 54.

ART. 8. PRIVILEGE OF ORGANIZED MILITIA

6869. Leaves of absence for state officers and employees. All officers and employees of the state who shall be members of the national guard or naval militia shall be entitled to leaves of absence from their respective duties, without loss of pay, time, or efficiency rating, on all days during which they shall be engaged in field or coast-defense training ordered or authorized under the provisions of this chapter.

1917, c. 200, s. 88.

6870. Exemption from road and jury duty. All members of the national guard and naval militia who comply with and perform all duties required of them as members of the national guard and naval militia are hereby exempted from duty upon the public roads of the counties in which they reside, and shall also be exempt from service as jurors. On the first day of January and July of each year, beginning with the first day of July, one thousand nine hundred and seventeen, the commanding officer of each company, troop, battery, detachment, or division of the national guard and naval militia of North Carolina, residing in the above mentioned counties, shall file with the clerk of the superior court of the county in which such company, troop, battery, detachment, or division is located a statement giving the name and rank of each member of his organization who has performed all military duties during the preceding six months; and any member of such military organization whose name does not appear upon such statement shall not receive the benefit of the exemption provided for herein during the six months immediately following the filing of the statement.

1913, c. 103; 1915, c. 217; 1917, c. 200, s. 89.

6871. Contributing members. Each organization of the national guard and naval militia may, besides its regular and active members, enroll twenty-five contributing members on payment in advance by each person desiring to become such contributing member of not less than ten dollars per annum, which money shall be paid into the company treasury. Each contributing member shall be entitled to receive from the commanding officer thereof a certificate of membership, which certificate shall exempt the holder from jury duty.

1917, c. 200, s. 90.

6872. Organizations may own property. Organizations of the national guard and naval militia shall have the right to own and keep real and personal property, which shall belong to and be under the control of the members of the organization; and the commanding officer of any organization may recover for its use any debts or effects belonging to it, or damages for injury to such property, action for such recovery to be brought in the name of the commanding officer thereof before any court of justice within the state having jurisdiction; and no suit or complaint pending in his name shall be abated by his ceasing to be commanding

officer of the organization; but upon motion of the commander succeeding him such commander shall be admitted to prosecute the suit or complaint in like manner and with like effect as if it had been originally commenced by him.

1917, c. 200, s. 92.

6873. When families of soldiers supported by county. When any citizen of the state is absent on duty as a member of the national guard or naval militia, and his family are unable to support themselves during his absence, the board of commissioners of his county, on application, shall make towards their maintenance such allowance as may be deemed reasonable.

1917, c. 200, s. 93.

ART. 9. CARE OF MILITARY PROPERTY

6874. Custody of military property. All public military property, except when used in the performance of military duty, shall be kept in armories, or other properly designated places of deposit; and it shall be unlawful for any person charged with the care and safety of said public property to allow the same out of his custody, except as above specified.

1917, c. 200, s. 38.

6875. Property deposited in arsenal. All the public arms of every description which may not be distributed among the militia according to law shall be deposited and kept in the public arsenal established at Raleigh.

1917, c. 200, s. 39.

6876. Arsenal provided. The board of public buildings and grounds shall provide a suitable building for an arsenal. The governor may make such provisions as he may deem necessary for the care and issue of property and for guarding and protecting the arsenal, and for the purpose of defraying the expenses under this section. He may, upon certificate of the adjutant general and warrant of the auditor, from time to time draw upon the treasurer for such sums as may be necessary.

1917, c. 200, s. 96.

6877. Property kept in good order. Every noncommissioned officer and private belonging to any company equipped with public arms shall keep and preserve his arms and accoutrements in good order and in a soldierly manner; and for every neglect to do so may be punished as a court-martial may direct.

1917, c. 200, s. 40.

6878. Horses and vehicles used only for military purposes. Horses, motor trucks, and other vehicles issued by the secretary of war to the national guard shall be used solely for military purposes.

1917, c. 200, s. 41.

6879. Transfer of property. All officers accountable or responsible for public funds, property, or books, before being relieved from the duty shall turn over the same according to the regulations prescribed by the governor.

1917, c. 200, s. 42.

6880. Replacement of lost or damaged property. Whenever any military property issued to the militia of the state shall have been lost, damaged, or destroyed, and upon report of a disinterested survey officer of the regular army, navy, or the militia it shall appear that the loss, damage, or destruction of property was due to carelessness or neglect, or that its loss, damage, or destruction could have been avoided by the exercise of reasonable care, the money value of such property shall be charged to the accountable and responsible officer or enlisted man, and the pay of such officers and enlisted men from both federal and state funds at any time accruing may be stopped and applied to the payment of any such indebtedness until the same is discharged. In addition thereto any officer accountable or responsible for military property shall be liable on his bond to the state and the property and disbursing officer or accounting officer for any lost, damaged, or destroyed property for which he is accountable or responsible.

1917, c. 200, s. 43.

6881. Injuring military property. If any person shall wantonly or wilfully injure or destroy any arms, equipment, or other military property of the state, and refuse to make good such injury or loss, or shall sell, dispose of, secrete, or remove the same with intent to sell or dispose thereof, he shall be fined not more than one hundred dollars or imprisoned not more than six months, or both.

Rev., s. 3536; Code, s. 3274; 1876-7, c. 272, s. 19.

6882. Member of national guard failing to return property. If any member of the North Carolina national guard shall wilfully fail to return any property of the state or the United States to the armory or other place of deposit, when notified by competent authority so to do, he shall be guilty of a misdemeanor and fined not exceeding fifty dollars, or imprisoned not exceeding thirty days.

Rev., s. 3537.

6883. Selling accoutrements. If any person shall sell, dispose of, pawn or pledge, destroy or injure, or wilfully retain after demand made, any public property issued for the purpose of arming or equipping the militia of the state, he shall be guilty of a misdemeanor.

Rev., s. 3541; Code, s. 3274; 1893, c. 374, s. 30.

6884. Selling public arms. If any person to whom shall be confided public arms or accoutrements shall sell, or in any manner embezzle the same, or any part thereof, or if any person shall purchase any of them, knowing them to be such, the person so offending shall be guilty of a misdemeanor.

Rev., s. 3542; Code, s. 3556; R. C., c. 89, s. 8; 1831, c. 45, s. 5.

6885. Refusing to deliver public arms on demand. Every commissioned officer of the militia, whenever and wherever he shall see or learn that any of the arms or accoutrements or other military property belonging to the state is in the possession of any person other than in whose hands they may be placed for safe-keeping, under the provisions of the law, shall make immediate demand for the same personally or in writing; and should such person refuse to deliver them to the officer he shall be guilty in like manner, and punished in like manner as for selling or embezzling public arms.

Rev., s. 3540; Code, s. 3558; R. C., c. 89, s. 10; 1831, c. 45, s. 7.

6886. Freight on property paid out of general fund. The auditor of the state is hereby authorized and directed to issue his warrant upon the state treasurer for the payment of such sums as may be certified by the adjutant general and the governor to be actually necessary to pay freight upon ammunition, uniforms, and equipment shipped out from and returned to the state arsenal.

1917, c. 200, s. 95.

ART. 10. SUPPORT OF MILITIA

6887. Requisition for funds. The governor shall annually make requisition upon the secretary of war for such state allotment from federal funds as may be necessary for the support of the militia.

1917, c. 200, s. 23.

6888. County appropriations. The county commissioners may appropriate such sums of money to the various organizations of the national guard or naval militia in their counties and at such times as the board may deem proper.

1917, c. 200, s. 91.

6889. Allowances made to different organizations; appropriation. The commanding officer of each brigade, regiment, the coast artillery, and the naval militia, shall maintain a headquarters office, for which actual expense therefor shall be allowed, to include office rent, light, heat, stamps, stationery, printing, and other necessary expenses, not to exceed two hundred and twenty-five dollars per annum. There shall be allowed to each major of the line not exceeding fifty dollars per annum with which to defray the necessary expenses of their respective offices. The chief surgeon and the commanding officer of each company of infantry, headquarters company, supply company, machine-gun company, coast artillery company, company of engineers, battery of field artillery, signal corps company, troop of cavalry, field hospital, ambulance company, aero squadron, division of naval militia, company of marines, and aeronautic section shall be allowed annually the sum of one hundred dollars; each lieutenant of such organization, battalion adjutants, and officers of corresponding grades and duties in the naval militia, the sum of fifty dollars; the commanding officer of each infirmary, sanitary unit, the sum of fifty dollars, for the purpose of defraying the necessary expenses of their respective offices. There shall be allowed annually to each company of infantry, headquarters company, supply company, machine-gun company, coast artillery company, company of engineers, battery of field artillery, signal corps company, troop of cavalry, field hospital, ambulance company, aero squadron, aeronautic section, division of naval militia, or company of marines, the sum of four hundred dollars, and to each regimental infirmary the sum of one hundred and fifty dollars, and to each sanitary detachment the sum of one hundred dollars, to be applied to the payment of armory rent, heat, light, stationery, printing, and other necessary expenses. There shall be allowed annually to the supply sergeant of each company of infantry, headquarters company, supply company, machine-gun company, coast artillery company, company of engineers, battery of field artillery, signal corps company, troop of cavalry, field hospital, ambulance company, aero squadron, and to a petty officer of each division

of naval militia, aeronautic section, and marine company the sum of fifty dollars, and to corresponding warrant officers of each regimental infirmary and sanitary detachment the sum of twenty-five dollars.

All payments are to be made by the state disbursing officer in semiannual installments on the first day of July and the first day of January of each year; but no payment shall be made unless all drills and parades required by law are duly performed by all organizations named. No officer shall be entitled to receive any part of the amounts named herein unless he has performed satisfactorily all duties required of him by law and has pursued such course of instruction as may from time to time be required.

The commanding officer of all organizations participating in the appropriations herein made shall render an itemized statement of all funds received from any source whatsoever for the support of their respective organizations in such manner and on such forms as may be prescribed by the adjutant general. Failure on the part of any officer to submit promptly when due the financial statement of his organization will be sufficient cause to withhold all appropriations for such organizations.

The sum of sixty-five thousand dollars is hereby appropriated annually, out of any moneys in the treasury not otherwise appropriated. All moneys not used by January first of each year shall be paid to the state treasurer and turned into the general fund of the state.

1917, c. 200, s. 97; 1919, c. 311.

ART. 11. GENERAL PROVISIONS

6890. Reports of officers. All officers of the national guard and the naval militia shall make such returns and reports to the governor, secretary of war, secretary of the navy, or to such officers as they may designate, at such times and in such forms as may from time to time be prescribed.

1917, c. 200, s. 21.

6891. Officer to give notice of absence. When any officer shall have occasion to be absent from his usual residence one week or more, he shall notify the officer next in command, and also his next superior officer in command, of his intended absence, and shall arrange for the officer next in command to handle and attend to all official communications.

1917, c. 200, s. 22.

6892. Articles of war applicable in time of peace. The national guard and naval militia, when not in the service of the United States, shall, except as to punishments, be governed respectively by the United States army regulations and articles of war, and the navy regulations and articles for the government of the navy.

1917, c. 200, s. 34.

6893. Commanding officer may prevent trespass and disorder. The commanding officer upon any occasion of duty may place in arrest during the continuance thereof any person who shall trespass upon the camp ground, parade ground, armory, or other place devoted to such duty, or who shall in any way or manner

interrupt or molest the orderly discharge of duty by those under arms, or shall disturb or prevent the passage of troops going to or returning from any duty. He may prohibit and prevent the sale or use of all spirituous liquors, wine, ale, beer, or cider, the holding of huckster or auction sales, and all gambling within the limits of the post, camp ground, place of encampment, parade, or drill under his command, or within such limits not exceeding one mile therefrom as he may prescribe. And he may in his discretion abate as common nuisance all such sales.

1917, c. 200, s. 94.

6894. Organizing company without authority. If any person shall organize a military company, or drill or parade under arms as a military body, except under the militia laws and regulations of the state, or shall exercise or attempt to exercise the power or authority of a military officer in this state, without holding a commission from the governor, he shall be guilty of a misdemeanor.

Rev., s. 3538; 1893, c. 374, s. 38.

6895. Placing name on muster roll wrongfully. If any officer of the militia of the state shall knowingly or wilfully place, or cause to be placed, on any muster roll the name of any person not regularly or lawfully enlisted, or the name of any enlisted man who is dead or who has been discharged, transferred, or has lost membership for any cause whatsoever, or who has been convicted of any infamous crime, he shall be guilty of a misdemeanor.

Rev., s. 3539; 1893, c. 374, s. 33.

CHAPTER 112

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ART. 1. OPERATION OF MINES

6896. Lessor not held partner of lessee. No lessor of property, real or personal, for mining purposes, although the lessor may receive an uncertain sum of the proceeds or net profits, or any other consideration, which, though uncertain at first, may afterwards become certain, shall be held as a partner of the lessee;

nor shall any of the legal or equitable relations or liabilities of copartners exist between them, unless it is so stipulated in the contract between the lessor and lessee.

Rev., s. 4930; Code, s. 3292; R. C., c. 72; 1830, c. 46.

6897. Minors under sixteen not to be employed. No minor under sixteen years of age shall be allowed to work in any mine, and in all cases of minors applying for work the agent of such mine shall see that the provisions of this section are not violated; and the inspector may, when doubt exists as to the age of any person found working in any mine, examine under oath such person and his parents, or other witnesses, as to his age.

Rev., s. 4931; 1897, c. 251, s. 7; 1919, c. 100, s. 6.

6898. Operator to furnish timber. The owner, agent, or operator of every coal mine shall keep a supply of timber constantly on hand, and shall deliver the same to the working place of the miner, and no miner shall be held responsible for accident which may occur in the mine where the provisions of this section have not been complied with by the owner, agent, or operator thereof, resulting directly or indirectly from the failure to deliver such timber.

Rev., s. 4932; 1897, c. 251, s. 8.

6899. Unused mines to be fenced. All underground entrances to any place not in actual course of working or extension shall be properly fenced across the whole width of such entrance so as to prevent persons from inadvertently entering the same.

Rev., s. 4933; 1897, c. 251, s. 5.

6900. Means of ingress and egress provided. No owner or agent of any coal mine worked by shaft shall permit any person to work therein unless there are, to every seam of coal worked in such mine, at least two separate outlets, separated by natural strata of not less than one hundred feet in breadth, by which shafts or outlets distinct means of ingress and egress are always available to the persons employed in the mine; but it is not necessary for the two outlets to belong to the same mine if the persons employed therein have safe, ready, and available means of ingress or egress by not less than two openings. This section shall not apply to opening a new mine while being worked for the purpose of making communications between the two outlets, so long as not more than twenty persons are employed at one time in such mine; neither shall it apply to any mine or part of a mine in which the second outlet has been rendered unavailable by reason of the final robbing of pillars previous to abandonment, as long as not more than twenty persons are employed therein at any one time. The cage or cages and other means of egress shall at all times be available for the persons employed when there is no second outlet. The escapement shafts shall be fitted with safe and available appliances, which shall always be kept in a safe condition, by which the persons employed in the mine may readily escape in case an accident occurs; and in no case shall an air shaft with a ventilating furnace at the bottom be construed to be an escapement shaft within the meaning of this section. To all other coal mines, whether slopes or drifts, two such openings or outlets must

be provided within twelve months after shipments of coal have commenced from such mine; and in case such outlets are not provided as herein stipulated, it shall not be lawful for the agent or owner of such slope or drift to permit more than ten persons to work therein at any one time.

Rev., s. 4934; 1897, c. 251, s. 4.

Defective hoisting appliance causing death of workman: *Hardister v. Richardson*, 169-186.

6901. Hoisting engines; how operated. No owner or agent of any mine operated by a shaft or slope shall place in charge of any engine used for lowering into or hoisting out of mines persons employed therein any but experienced, competent, and sober engineers, and no engineers in charge of such engine shall allow any persons except as may be deputed for such purposes by the owner or agent to interfere with it or any part of the machinery, and no person shall interfere or in any way intimidate the engineer in the discharge of his duties, and in no case shall more than six men ride on any cage or car at one time, and no person shall ride upon a loaded cage or car in any shaft or slope.

Rev., s. 4935; 1897, c. 251, s. 6; 1911, c. 183.

6902. Ventilation. The owner or agent of any coal mine, whether shaft, slope, or drift, shall provide and maintain for every such mine an amount of ventilation of not less than one hundred cubic feet per minute per person employed in such mine, which shall be circulated and distributed throughout the mine in such a manner as to dilute, render harmless and expel the poisonous and noxious gases from every working place in the mine. No working place shall be driven more than sixty feet in advance of a break-through or airway, and all break-throughs or airways, except those last made near the working places of the mine, shall be closed up by brattice trap-doors, or otherwise, so that the currents of air in circulation in the mine may spread to the interior of the mine when the persons employed in such mine are at work. All mines governed by this chapter shall be provided with artificial means of producing ventilation, such as forcing or suction fans, exhaust steam furnaces, or other contrivances of such capacity and power as to produce and maintain an abundant supply of air, and all mines generating fire damp shall be kept free from standing gas.

Rev., s. 4936; 1897, c. 251, s. 5.

6903. Daily examinations; safety lamps. Every working place shall be examined every morning with a safety lamp by a competent person before any workmen are allowed to enter the mine. All safety lamps used in examining mines, or for working therein, shall be the property of the operator of the mine, and a competent person shall be appointed, who shall examine every safety lamp before it is taken into the workings for use, and ascertain it to be clean, safe, and securely locked, and safety lamps shall not be used until they have been so examined and found safe and clean and securely locked, unless permission be first given by the mine foreman to have the lamps used unlocked. No one except the duly authorized person shall have in his possession a key, or any other contrivance, for the purpose of unlocking any safety lamp in any mine where locked lamps are used. No matches or any other apparatus for striking lights shall be taken into any mine, or parts thereof, except under the direction of the mine foreman.

Rev., s. 4937; 1897, c. 251, ss. 5, 6.

6904. Report of ventilation. The mine foreman shall measure the ventilation at least once a week, at the inlet and outlet, and also at or near the face of all the entries, and the measurement of air so made shall be noted on blanks furnished by the inspector; and on the first day of each month the mine boss of each mine shall sign one of such blanks, properly filled with the actual measurement, and present the same to the inspector.

Rev., s. 4938; 1897, c. 251, s. 6.

6905. Notice of opening or changing mines given. The owner, agent, or manager of any mine shall give notice to the inspector in the following cases: 1. When any working is commenced for the purpose of opening a new shaft, slope, or mine, to which this chapter applies. 2. When any mine is abandoned, or the working thereof discontinued. 3. When the working of any mine is recommenced after an abandonment or discontinuance for a period exceeding three months. 4. When a squeeze or crush, or any other cause or change, may seem to affect the safety of persons employed in the mine, or when fire occurs.

Rev., s. 4939; 1897, c. 251, s. 7.

6906. Notice of accidents given. The owner, agent, or manager of every mine shall, within twenty-four hours next after any accident or explosion, whereby loss of life or personal injury may have been occasioned, send notice, in writing, by mail or otherwise, to the inspector, and shall specify in such notice the character and cause of the accident, and the name or names of the persons killed and injured, with the extent and nature of the injuries sustained. When any personal injury of which notice is required to be sent under this section results in the death of the person injured, notice in writing shall be sent to the inspector within twenty-four hours after such death comes to the knowledge of the owner, agent, or manager; and when loss of life occurs in any mine by explosion, or accident, or results from personal injuries so received, the owner, agent, or manager of such mine shall notify the coroner of the county in which such mine is situated, and the coroner shall hold an inquest upon the body of the person whose death has been thus caused, and inquire carefully into the cause thereof, and return a copy of the finding of the jury and all the testimony to the inspector.

Rev., s. 4940; 1897, c. 251, s. 6.

6907. Report to inspector. The owner, lessee, or agent in charge of any mine, any limestone quarry, or who is engaged in mining or producing any mineral whatsoever in this state, shall, on or before the thirtieth day of November in every year, send to the office of the inspector upon blanks to be furnished by him a correct return, specifying with respect to the year ending on the preceding first day of October the quantity of coal, iron ore, fire-clay, limestone, or other mineral product of such mine or quarry, and the number of persons ordinarily employed in or about such mine or quarry below and above ground, distinguishing the persons and labor below ground and above ground.

Rev., s. 4941; 1897, c. 251, s. 3.

6908. Liability for injuries. For any injury to person or property occasioned by any wilful violation of this chapter, or any wilful failure to comply with its provisions, by any owner, agent, or manager of the mine, a right of action shall

accrue to the party injured for any damage he may sustain thereby; and in any case of loss of life by reason of such wilful neglect or failure a right of action shall accrue to the personal representative of the deceased, as in other actions for wrongful death.

Rev., s. 4942; 1897, c. 251, s. 6.

Death resulting from negligence in providing appliances: *Hardister v. Richardson*, 169-186.

6909. Punishment for violation. If any person shall knowingly violate any of the provisions of the law relating to mines or shall do anything whereby the life or health of persons or the security of any mine and machinery is endangered, or if any miner or other person employed in any mine governed by the statutes shall intentionally or wilfully neglect or refuse to securely prop the roof of any working place under his control, or neglect or refuse to obey any orders given by the superintendent of a mine in relation to the security of a mine in the part thereof where he is at work and for fifteen feet back of his working place, or if any miner, workman, or other person shall knowingly injure any water-gauge, barometer, air-course, or brattice, or shall obstruct or throw open any air-ways, or shall handle or disturb any part of the machinery of the hoisting engine or signaling apparatus or wire connected therewith, or air pipes or fittings, or open a door of the mine and not have the same closed again, whereby danger is produced either to the mine or those that work therein, or shall enter any part of the mine against caution, or shall disobey any order given in pursuance of law, or shall do any wilful act whereby the lives and health of the persons working in the mine or the security of the mine or the machinery thereof is endangered, or if the person having charge of a mine whenever loss of life occurs by accident connected with the machinery of such mine or by explosion shall neglect or refuse to give notice thereof forthwith by mail or otherwise to the inspector and to the coroner of the county in which such mine is situated, or if any such coroner shall neglect or refuse to hold an inquest upon the body of the person whose death has been thus caused, and return a copy of his findings and a copy of all the testimony to the inspector, he shall be guilty of a misdemeanor, and upon conviction fined not more than fifty dollars or imprisoned in the county jail not more than thirty days, or both.

Rev., s. 3797; 1897, c. 251, s. 8.

ART. 2. INSPECTION OF MINES

6910. Commissioner of labor and printing is inspector. The commissioner of labor and printing shall perform the duties of mine inspector as provided in this chapter.

Rev., s. 4943; 1897, c. 251, s. 1.

6911. Inspector to examine mines. It shall be the duty of the inspector to examine all the mines in the state as often as possible to see that all the provisions and requirements of this chapter are strictly observed and carried out; he shall particularly examine the works and machinery belonging to any mine, examine into the state and condition of the mines as to ventilation, circulation, and condition of air, drainage, and general security.

Rev., s. 4944; 1897, c. 251, s. 2.

6912. May enter to make examinations. For the purpose of making the inspection and examinations provided for in this chapter, the inspector shall have the right to enter any mine at all reasonable times, by night or by day, but in such manner as shall not unnecessarily obstruct the working of the mine; and the owner or agent of such mine is hereby required to furnish the means necessary for such entry and inspection; the inspection and examination herein provided for shall extend to fire-clay, iron ore, and other mines as well as coal mines.

Rev., s. 4945; 1897, c. 251, s. 2.

6913. Death by accident investigated. Upon receiving notice of any death resulting from accident it shall be the duty of the inspector to go himself, or send a representative, at once to the mine in which the death occurred and inquire into the cause of the same, and to make a written report fully setting forth the condition of that part of the mine where such death occurred and the cause which led to the same; which report shall be filed by the inspector in his office as a matter of record and for future reference.

Rev., s. 4946; 1897, c. 251, s. 6.

6914. Record of examinations. He shall make a record of all examinations of mines, showing the date when examination is made, the condition in which the mines are found, the extent to which the laws relating to mines and mining are observed or violated, the progress made in the improvements and security of life and health sought to be secured by the provisions of this chapter, number of accidents, injuries received, or deaths in or about the mines, the number of mines in the state, the number of persons employed in or about each mine, together with all such other facts and information of public interest, concerning the condition of mines, development and progress of mining in the state as he may think useful and proper, which record shall be filed in the office of the inspector, and as much thereof as may be of public interest to be included in his annual report.

Rev., s. 4947; 1897, c. 251, s. 2.

6915. Papers to be preserved. He shall keep in his office and carefully preserve all maps, surveys, and other reports and papers required by law to be filed with him, and so arrange and preserve the same as shall make them a permanent record of ready, convenient, and connected reference.

Rev., s. 4948; 1897, c. 251, s. 3.

6916. Inspector to enforce law; counsel furnished. In case of any controversy or disagreement between the inspector and the owner or operator of any mine or the persons working therein, or in case of conditions or emergencies requiring counsel, the inspector may call on the governor for such assistance and counsel as may be necessary. If the inspector finds any of the provisions of this chapter violated or not complied with by any owner, lessee, or agent in charge, unless the same is within a reasonable time rectified, and the provisions of this chapter fully complied with, he shall institute an action in the name of the state to compel the compliance therewith. The inspector shall exercise a sound discretion in the enforcement of this chapter.

Rev., s. 4949; 1897, c. 251, s. 2.

6917. Operation enjoined when law violated. On application of the inspector, after suit brought as directed in the preceding section, any court of competent jurisdiction may enjoin or restrain the owner or agent from working or operating such mine until it is made to conform to the provisions of this chapter; and such remedy shall be cumulative, and shall not take the place of or affect any other proceedings against such owner or agent authorized by law for the matter complained of in such action.

Rev., s. 4950; 1897, c. 251, s. 7.

6918. Report to governor. The inspector shall annually make report to the governor of all his proceedings, the condition and operation of the different mines of the state, and the number of mines and the number of persons employed in or about such mines, the amount of coal, iron ore, limestone, fire-clay, or other mineral mined in this state; and he shall enumerate all accidents in or about the mines, and the manner in which they occurred, and give all such other information as he thinks useful and proper, and make such suggestions as he deems important relative to mines and mining, and any legislation that may be necessary on the subject for the better preservation of the life and health of those engaged in such industry.

Rev., s. 4951; 1897, c. 251, s. 3.

6919. Application of law. The provisions of this chapter shall not apply to or affect any mine in which not more than ten men are employed at the same time; but the inspector shall at all times have free ingress to such mines for the purpose of examination and inspection, and shall direct and enforce any regulation in accordance with the provisions of this chapter that he may deem necessary for the safety of the health and lives of the miners employed therein.

Rev., s. 4952; 1897, c. 251, s. 8.

ART. 3. WATERWAYS OBTAINED

6920. Water and drainage rights obtained. Any person or body corporate engaged or about to engage in mining, who may find it necessary for the furtherance of his operations to convey water either to or from his mine or mines over the lands of any other person or persons, may make application by petition in writing to the clerk of the superior court of the county in which the lands to be affected or the greater part are situate, for the right so to convey such water. The owner of the lands to be affected shall be made a party defendant, and the proceeding shall be conducted as other special proceedings.

Rev., s. 4953; Code, ss. 3293, 3294, 3300; 1871-2, c. 158, ss. 1, 3.

6921. The petition, what to contain. The petition shall specify the lands to be affected, the name of the owner of such lands, and the character of the ditch or drain intended to be made.

Rev., s. 4954; Code, s. 3294; 1871-2, c. 158, s. 3.

6922. Appraisers; appointment and duties. Upon the hearing of the petition, if the prayer thereof be granted, the clerk shall appoint three disinterested persons, qualified to act as jurors, and not connected either by blood or marriage

with the parties, appraisers to assess the damage, if any, that will accrue to the lands by the contemplated work, and shall issue a notice to them to meet upon the premises at a day specified, not to exceed ten days from the date of such notice. The appraisers having met, shall take an oath before some officer qualified to administer oaths to faithfully perform their duty and to do impartial justice in the case, and shall then examine all the lands in any way to be affected by such work, and assess the damage thereto, and make report thereof under their hands and seals to the clerk from whom the notice issued.

Rev., s. 4955; Code, ss. 3295, 3296, 3299; 1871-2, c. 158, ss. 4, 5, 9.

6923. Confirmation of report; payment of damages; rights of petitioner. After the filing of the report and confirmation thereof by the clerk, who shall have power to confirm or, for good cause, set aside the same, the petitioner shall have full right and power to enter upon such lands and make such ditches, drains, or other necessary work: Provided, he has first paid or tendered the damages, assessed as above, to the owner of such lands or his known and recognized agent, if he be a resident of this state, or have such agent in this state. If the owner be a nonresident and have no known agent in this state, the amount so assessed shall be paid by the petitioner into the office of the clerk of the superior court of the county for the use of such owner.

Rev., s. 4957; Code, s. 3298; 1871-2, c. 158, s. 12.

6924. Registration of report. The petitioner, or any other person interested, may have the report of the appraisers registered upon the certificate of the clerk and shall pay the register a fee of twenty-five cents therefor.

Rev., s. 4957; Code, s. 3298; 1871-2, c. 158, s. 8.

6925. Obstructing mining drains. If any person shall obstruct any drain or ditch constructed under the provisions of this chapter, he shall be guilty of a misdemeanor.

Rev., s. 3380; Code, s. 3301; 1871-2, c. 158, s. 12.

6926. Disposition of waste. In getting out and washing the products of kaolin mines, the persons engaged in such business shall have the right to allow the waste, water, and sediment to run off into the natural courses and streams.

1917, c. 123.

ART. 4. ADJUSTMENT OF CONFLICTING CLAIMS

6927. Liability for damage for trespass. If any owner or person in possession of any mine or mining claim shall enter upon, either on the surface or underground, any mine or mining claim, the property of another, and shall mine or carry away any valuable mineral therefrom, he shall be liable to the owner of the mine so trespassed upon for double the value of all such mineral mined or carried away, and for all other damages; and the value of the mineral mined or carried away shall be presumed to be the amount of the gross value ascertained by an average assay of the excavated material or vein or ledge from which it was taken. If such trespass is wrongfully and wilfully made, punitive damages may be allowed.

1913, c. 51, s. 1.

6928. Persons entitled to bring suit. The owner of a mine in this state, or any person in possession under a lease or other contract, may maintain an action to recover damages to such property arising from the operation of any adjacent mine by the owner thereof or other person in possession and working the same under lease or contract, and also to prevent the continuance of the operation of the adjacent mine in such a manner as to injure or endanger the safety of the complainant's mine.

1913, c. 51, s. 1.

6929. Application and order for survey. The person entitled to bring an action, as provided in the preceding section, may apply to any judge of the superior court having jurisdiction to grant injunctions and restraining orders, and obtain an order of survey in the following manner: He shall file an affidavit giving the names of the parties and the location, as near as may be, of the mine complained of; the location of the plaintiff's mine, and that he has reason to believe that the defendant, or his agents or employees, are or have been trespassing upon his mine, or working the defendant's mine in such a manner as to damage or endanger the plaintiff's property. Upon the filing of the affidavit, the judge shall cause a notice to be issued to the defendant or his agents, stating the time and place and before whom the application will be heard, and requiring them to appear, in not less than ten nor more than twenty days from the date thereof, and show cause why an order of survey should not be granted. Upon the hearing, and for good cause shown, the judge shall grant an order directed to some competent disinterested surveyor or mining engineer, or both, as the case may be, who shall proceed to make the necessary examination and surveys, as directed by the court, and report their action to the court. The persons selected by the judge to make the survey and examination shall be residents of the state, and, before entering upon the discharge of their duty, shall take and subscribe an oath that they will fairly and impartially survey the mines described in the petition. In all other respects, except as stated above, the surveyors appointed by the judge shall proceed as in surveys in disputed boundaries.

1913, c. 51, s. 2.

6930. Free access to mine for survey. Upon the order made for the survey in the manner, at the time, and by the persons mentioned in the order, which shall include a representative of the party making the application, who shall not be one of the surveyors, there shall be given free access to the mine for the purpose of survey, and any interference with the persons acting under the order of survey shall be contempt of court and punished accordingly. If the persons named in the order of survey so require, they, with their instruments, shall be carefully lowered and raised in and out of the mine with the cage, bucket, or skip ordinarily used in the shafts of the mine; and they may demand of the owner of the mine, or his manager or agent, that they be so raised and lowered at a speed agreeable to them and not to endanger their comfort and safety or to injure the accuracy of their instruments. The owner of the mine, his managers or agents, shall be liable in damages to the persons making the examination for any injury

to them or to their instruments, caused by the careless and negligent operation of any bucket, cage, or skip at such a high rate of speed as to injure the persons or their instruments while being lowered or raised in the mine.

1913, c. 51, s. 2.

6931. Costs of the survey. The costs of the order and survey shall be paid by the person making the application; but if he shall maintain an action and recover damages for the injury done or threatened prior to such survey and examination, the costs of the order and survey shall be taxed against the defendant as other costs in the action. The party obtaining the survey shall be liable for any unnecessary injury done to the property examined and surveyed in making the survey.

1913, c. 51, s. 2.

CHAPTER 113

MONUMENTS, MEMORIALS, AND PARKS

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- 6933. Appomattox commission.
- 6934. County commissioners may protect monuments.

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- 6936. Meetings of commission; term of office; successors.
- 6937. Commission to raise funds by voluntary contributions and erect memorial building.
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ART. 3. MOUNT MITCHELL PARK COMMISSION.

- 6939. Commission created.
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- 6942. Roads, trails, and fences authorized; protection of property.

ART. 1. CONFEDERATE MONUMENTS

6932. Land at Appomattox Court House accepted. Whereas all North Carolinians are justly proud of their state's glorious record in the war between the states, and that her heroic soldiers were "first at Bethel, farthest at Gettysburg and Chickamauga, last at Appomattox"; and whereas a deed has been generously given by a gallant officer of the Union army, Major George A. Armes, U. S. A., retired, to Hon. Henry A. London, for three lots or parcels of land on the battlefield of Appomattox Court House for the purpose of placing thereon permanent memorials to commemorate—

1. The last volley fired by Cox's brigade of Grimes's division,
2. The capture of a battery of artillery by Roberts's brigade of cavalry, and
3. The last skirmish by Captain W. T. Jenkins;

and whereas a tender of said lots has been made by said London as a gift to the state of North Carolina: Now, therefore, the governor is authorized and directed to receive, for the state, a deed from said London (as a gift from said Armes) for the aforesaid three lots of land on the battlefield of Appomattox Court House in the state of Virginia.

Rev., s. 3925; 1905, c. 10.

6933. Appomattox commission. The governor is authorized and directed to appoint every four years five special commissioners, to be known as The North Carolina Appomattox Commission, who shall serve for four years and until their successors are appointed, with full power to select their chairman and to fill any vacancy in their number that may occur, and to serve without compensation, except their actual necessary expenses, for a time not exceeding six days in any one year, which are to be paid by the state treasurer upon the warrant of the auditor, who shall issue his warrant when approved by the governor. The commissioners shall have the charge and control of said lots, and of the erection

thereon of such permanent memorials as they may deem proper, but no cost of such memorials shall be paid by the state, except a sum not exceeding one thousand dollars, which is hereby appropriated for the erection of a monument on the lot where the last volley was fired by Cox's brigade of Grimes's division.

Rev., s. 3926; 1905, c. 10, ss. 2, 3.

6934. County commissioners may protect monuments. When any monument has been or shall hereafter be erected to the memory of our Confederate dead or to perpetuate the memory and virtues of our distinguished dead, if such monument is erected by the voluntary subscription of the people and is placed on the courthouse square, the board of county commissioners of such county are permitted to expend from the public funds of the county an amount sufficient to erect a substantial iron fence around such monument in order that the same may be protected.

Rev., s. 3928; 1905, c. 457.

NOTE.—For marking places of historic interest, see 1917, c. 277.

ART. 2. MEMORIALS

6935. Memorial building commission created. A memorial building commission is hereby created, to consist of the governor, the president of the senate, the speaker of the house of representatives, and nine other well-qualified persons who shall be appointed by the governor, which shall be and is hereby created a body politic and corporate under the name and style of the North Carolina Memorial Building Commission. The governor shall be the chairman of the commission.

1919, c. 3, ss. 1, 2.

6936. Meetings of commission; term of office; successors. The memorial building commission shall have power to fix the time and place of its meetings. The commissioners shall hold office until the work hereinafter provided for shall have been completed and they shall have made report of the same to the general assembly and shall have been discharged. In the event of the death or resignation of any member of the commission, his successor shall be appointed by the governor. The commissioners shall receive no compensation. The position of commissioner under the provisions of this article shall not be construed to be an office within the meaning of section seven, article fourteen, of the constitution of North Carolina.

1919, c. 3, s. 3.

6937. Commission to raise funds by voluntary contributions and erect memorial building. As a recognition of the valor and distinguished service of the state's soldiers and sailors, and in the honor and to the memory of all North Carolina citizens who gave their lives, services or property to the end that the war with Germany and her allies might be won, the commission is hereby authorized to formulate plans, rules and regulations and to raise by voluntary contributions sufficient funds, as soon as practicable, and to acquire, either by gift, purchase or condemnation, a suitable site at the state capital, and shall proceed to erect thereon, or, with the consent of the council of state, on land already owned by the state not otherwise used, a suitable, useful and fireproof memorial building to

be used as a depository for preserving, exhibiting and administering the records, relics and memorials of said war, and other historical records and effects of this state, and when said building is completed the same shall be the property of the state of North Carolina.

1919, c. 3, s. 4.

6938. Counties, cities, and towns may contribute toward erection of memorials. Any county, city, or town by resolution first adopted by its governing body may become a member of any memorial association or organization for perpetuating the memory of the soldiers and sailors of North Carolina who served the United States in the great world war, and may subscribe and pay toward the cost of the erection of any memorial to the memory of such soldiers and sailors such sums of money as its governing body may determine, and may be represented in such association or organization by such persons as its governing body may select. Any contribution so made shall be paid out of the general fund of such county, city, or town making same, on such terms as may be agreed upon by its governing body, and the officers having the control and management of the association or organization to which subscription and contribution are made.

1919, c. 21, ss. 1, 2, 3.

ART. 3. MOUNT MITCHELL PARK COMMISSION

6939. Commission created. A commission is hereby created to consist of five citizens of North Carolina, interested in the preservation of Mitchell's Peak, who shall be appointed by the governor, to be known as the Mount Mitchell park commission, who shall serve without compensation. The commission is created a body politic and corporate under the name and style of Mount Mitchell Park Commission.

1919, c. 316, ss. 1, 2.

6940. Duties. The commission shall have complete control, care, protection and charge of that part of Mitchell's park acquired by the state.

1919, c. 316, s. 3; 1915, c. 76.

6941. Meetings; term of service; annual reports to governor; successors. The commission shall meet soon after its appointment by the governor, and organize by the election of one of its members as chairman and another as secretary. They shall hold their offices for such term of years as the governor may direct, and their successors shall be appointed by the governor. They shall keep a complete record of their proceedings and make annual report to the governor.

1919, c. 316, s. 4.

6942. Roads, trails, and fences authorized; protection of property. The commission is authorized and empowered to enter upon the land hereinbefore referred to, and to build a fence or fences around the same, also roads, paths, and trails, and protect the property against trespass and fire and injury of any and all kinds whatsoever; to cut wood and timber upon the same, but only for the purpose of protecting the other timber thereon and improving the property generally.

1919, c. 316, s. 5.

CHAPTER 114

NAVIGATION

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ART. 1. CAPE FEAR RIVER

6943. Board of commissioners of navigation and pilotage; harbor master. A board of commissioners of navigation and pilotage for the Cape Fear river and bar is hereby constituted, and shall consist of five members, four of whom shall be residents of the city of Wilmington and one of the city of Southport. The members of the board shall be appointed by the governor, and their terms of office shall begin on April fifteenth of the year in which they are appointed, and continue for four years and until their successors shall be appointed and qualified. It shall be the duty of the governor to appoint, on or before the fifth day of April, one thousand nine hundred and seven, and on or before the fifth day of April of every fourth year thereafter, the members of the said board of commissioners. A majority of said board shall constitute a quorum and may act in all cases. Said board shall have power to fill vacancies, as they occur, in the board during their term; to appoint a clerk to record in a book, rules, orders, and proceedings of the board; and they shall have authority in all matters that may concern the navigation of waters from seven miles above Negro-Head Point downwards, and out of the bar and inlets. They shall annually, on the first Monday in May, appoint a harbor master for the port of Wilmington.

1907, c. 625, s. 1; 1915, c. 200.

Right of the state to regulate pilotage: *St. George v. Hardie*, 147-88; *Morse v. Heide*, 152-625. **The statute is constitutional, and should be construed liberally as a part of the maritime law:** *St. George v. Hardie*, 147-88.

6944. Rules to regulate pilots. The commissioners shall from time to time make and establish such rules and regulations respecting the arrangement and station of pilots for the purpose of compelling them to be on duty at all times as to them shall seem most advisable, and shall impose reasonable fines, forfeitures, and penalties for the purpose of enforcing the execution of such rules and regulations.

1907, c. 625, s. 2.

The commissioners have the power to regulate cruising grounds for pilots, and such regulations must be obeyed: *Morse v. Heide*, 152-625.

6945. To examine and commission pilots. The board, or a majority of them, shall from time to time examine, or cause to be examined, such persons as may offer themselves to be pilots for the Cape Fear river and bar, and shall give to such

as are approved, commissions, under their hands and seals, to act as pilots both for the bar and river, according as they shall be by the commissioners found qualified: Provided, that all Cape Fear pilots who held branches on January first, one thousand nine hundred and five, shall be given branches or licenses by the said commissioners upon application and the tender of the required bond without examination: Provided further, that no new branches shall be given until after the number of pilots commissioned shall have been reduced by death, resignation, or otherwise to the number of fifteen, and there shall not be at any one time thereafter a greater number than fifteen nor a less number than ten commissioned by the board.

1907, c. 625, s. 3; 1917, c. 33, s. 1.

Requiring a license and limiting the number of pilots is a valid exercise of police power: *St. George v. Hardie*, 147-88.

6946. To regulate pilots' apprentices. When the number of pilots shall have been reduced to twenty, then the board of commissioners of navigation and pilotage shall make such rules and regulations for apprentices as they may deem best. No apprentice shall be required to serve for a longer period than three years for a fifteen-foot branch, and one year thereafter for a full branch.

1907, c. 625, s. 4.

6947. Applicants for pilot's license to establish competency. Before the commissioners of navigation shall grant a commission or license to pilot vessels on Cape Fear river or its bar, it shall be the duty of the board to require the applicant to prove, by at least three nautical men under oath, his competency to manage or work vessels, and such knowledge of the Cape Fear river and its bar as may be necessary to qualify him to pilot vessels: Provided, that this shall not apply to pilots who held branches on January first, one thousand nine hundred and five.

1907, c. 625, s. 5.

6948. Classes of licenses issued. Commissioners shall issue two classes of license, as follows: (1) A license to pilot vessels whose draught of water does not exceed fifteen feet, to such applicants above the age of twenty-one years who have served as apprentices for at least three years, and complied with this chapter. (2) An unlimited or full license to those who have served at least one year under a license of the first class, to pilot vessels of any draught of water.

1907, c. 625, s. 6.

6949. Renewal of pilots' licenses; fee. All licenses shall be renewed annually upon the payment of a fee of five dollars, but the board of commissioners of navigation and pilotage shall not grant a renewal of license to any pilot who has refused or failed to perform the duties of pilot during the preceding two years.

1907, c. 625, s. 7.

6950. Pilots to give bond. Every person before being commissioned as a pilot shall give the bond required of pilots by the third section of the fifth article of this chapter. The board may from time to time, and as often as they may deem it necessary, enlarge the penalty of the bond, or require new and additional bonds

to be given, in a sum or sums not to exceed in all one thousand dollars. Every bond taken of a pilot shall be filed with and preserved by the board of commissioners, in trust for every person that shall be injured by the neglect or misconduct of such pilot or his apprentices, who may severally bring suit thereon for the damage by each one sustained.

1907, c. 625, s. 8.

6951. To license pilots on steamboats. The commissioners shall have power to grant permission, in writing, to any pilot in good standing and authorized to pilot vessels, to run regularly as pilots on steamers running between the port of Wilmington and other ports in the United States, said pilot to have all the rights and emoluments that belong to the river and bar pilots.

1907, c. 625, s. 9.

Section construed to limit the operation of pilots to the established cruising grounds: *Morse v. Heide*, 152-625.

6952. Branches may be canceled. The board of commissioners shall have power to call in and cancel the branch of any pilot who has refused or neglected, except in case of sickness, his branch for the space of two years in succession, and any pilot who has been absent from the state for a longer period than six months shall, upon his return, surrender his branch to the board of commissioners, or they may declare the same null and void, except when absent under permission from the commissioners as provided in section 6951.

1907, c. 625, s. 10.

6953. Commissioners' jurisdiction over pilotage. Each commissioner or any justice of the peace of the counties of New Hanover and Brunswick shall have power and authority to hear and determine all matters of dispute between any pilot and master of a vessel, or between the pilots themselves, respecting the pilotage of vessels; and any one of them may issue a warrant against any pilot for the recovery of any demand which one pilot may have against another, relative to pilotage, and for the recovery of any forfeiture or penalty incurred by any act of the general assembly for regulating the pilotage of Cape Fear river and bar, or incurred by any by-law or rule passed in virtue thereof; which warrant the sheriff or any constable of New Hanover or Brunswick counties shall execute, together with all other process authorized by this article. On any warrant, issued as aforesaid, any one of said commissioners may give judgment for any sum not exceeding sixty dollars, and may issue execution thereon, in the manner of issuing execution on judgments given by justices of the peace, which may be executed agreeably to the rules and regulations prescribed for the levy and sale under executions issuing on judgments rendered by justices of the peace; and such commissioner shall issue summons for witnesses and administer oaths as is done in cases of trials before justices of the peace.

1907, c. 625, s. 11.

See *St. George v. Hardie*, 147-88.

6954. No stay of execution in certain pilots' cases. There shall be no stay of execution on any judgment obtained by pilots against masters of vessels, or by masters of vessels against pilots, or by pilots against pilots, on account of any

compensation or detention or for any forfeiture or penalty payable to any pilot or master of a vessel, by pilot or master of a vessel, in virtue of any act of the general assembly or by-law made in pursuance thereof; but appeals shall be allowed in such cases, under the rules which regulate appeals from the judgments of justices of the peace: Provided, that if on the appeal of any defendant the recovery shall not be lessened, and it shall be the opinion of the court that the appeal was obtained for the purpose of delay, the court shall adjudge the defendant to pay twenty per cent of the original judgment, which shall be added thereto, and execution shall issue for the whole amount.

1907, c. 625, s. 12.

See *St. George v. Hardie*, 147-88.

6955. When employment compulsory; rates of pilotage. All vessels, coast-wise or foreign, over sixty gross tons, shall, on and after the first day of May, one thousand nine hundred and seven, take a state-licensed pilot from sea to Southport, and from Southport to sea, and the rates of pilotage shall be the rates given in column number one below, designated “From Sea to Southport, or vice versa”; the employment of pilots from Southport to Wilmington and from Wilmington to Southport is optional, but any vessel taking a pilot from Southport to Wilmington, or from Wilmington to Southport, shall employ only a state-licensed pilot, and the rates of pilotage shall be the rates given in column number two below, designated “From Southport to Wilmington, or vice versa”:

Column No. 1.		Column No. 2.	
FROM		FROM	
SEA TO SOUTHPORT,		SOUTHPORT TO WILMINGTON,	
OR VICE VERSA.		OR VICE VERSA.	
<i>Feet and Under.</i>	<i>Rate.</i>	<i>Feet and Under.</i>	<i>Rate.</i>
6	\$ 10.76	6	\$ 6.46
7	13.06	7	7.83
8	14.83	8	8.89
9	16.09	9	10.01
10	21.08	10	12.64
11	25.55	11	15.33
12	28.58	12	17.14
12½	30.30	12½	18.18
13	31.84	13	19.11
13½	34.15	13½	20.49
14	38.91	14	23.35
14½	42.74	14½	25.64
15	45.08	15	27.04
15½	47.17	15½	28.30
16	50.32	16	30.19
16½	54.13	16½	32.48
17	57.34	17	34.41
17½	61.02	17½	36.72
18	64.05	18	38.55
18½	67.17	18½	40.34
19	71.72	19	43.04
19½	74.96	19½	44.99
20	78.30	20	46.98
20½	82.81	20½	49.39
21	87.50	21	52.50
21½	93.75	21½	56.25

<i>Column No. 1—Continued</i>		<i>Column No. 2—Continued</i>	
22	.....\$100.00	22	.....\$ 60.00
22½	..... 106.25	22½	..... 63.75
23	..... 114.06	23	..... 68.44
23½	..... 121.88	23½	..... 73.12
24	..... 131.25	24	..... 78.75
25	..... 143.50	25	..... 89.00

1907, c. 625, s. 13.

Pilot is entitled to fees for services properly tendered and refused: *St. George v. Hardie*, 147-88. He is entitled to his fees until his license is revoked: *Davis v. Heide*, 161-476.

6956. Pay for detention of pilots. Every master of a vessel who shall detain a pilot at the time appointed, so that he cannot proceed to sea, though wind and weather permit, shall pay such pilot three dollars per day during the time of his actual detention.

1907, c. 625, s. 14.

6957. Vessels not liable for pilotage. Any vessel coming into Southport from sea without the assistance of a pilot, the wind and weather being such that such assistance or service could have been reasonably given, shall not be liable for pilotage inward from sea, and shall be at liberty to depart without payment of any pilotage, unless the services of a pilot be secured.

1907, c. 625, s. 15.

Section construed in *St. George v. Hardie*, 147-88.

6958. First pilot to speak vessel to get fees. The first pilot speaking a vessel shall be entitled to the pilotage fees over the bar to Southport, and out to sea again, provided said pilot shall be ready and willing to serve as pilot when the vessel is ready to depart.

1907, c. 625, s. 16.

See *St. George v. Hardie*, 147-88; *Morse v. Heide*, 152-625.

6959. Vessels entering for harborage exempt. Any vessel coming in from sea for harbor shall not be required to take a pilot either from sea inward or back to sea.

1907, c. 625, s. 17.

6960. Harbor master of Wilmington; duties. The harbor master appointed for the port of Wilmington shall hold his office for one year next ensuing and until his successor is appointed. The harbor master shall have power and is required—

1. To keep the channel-way of the Cape Fear river and the track of vessels clear; to berth vessels at appropriate wharves or docks; to change the berth of any vessel at request of the owner of the wharf or dock; to move such vessels to some other wharf or to a safe anchorage in the stream; and he is further authorized and required to determine in all cases how far and in what instances it is the duty of masters and others having charge of vessels, flats, rafts, or crafts to accommodate each other in their respective berths and situations.

2. To arrest any person violating this chapter, and to immediately bring such offender before some justice of the peace of the county in which such offense may be committed, for trial.

3. Whenever in his judgment it shall be necessary, to cast loose from any wharf or dock any raft, flat, vessel, or other craft by untying or cutting the lines by which it is made fast, if the owner after notice refuse to remove such vessel.

4. Whenever any of the public docks of the city of Wilmington are obstructed by any vessels, flats, barges, logs, hulks, trash, or garbage, and the owner thereof cannot be found or fails to remove the same from said docks, to take the most speedy method to clear the docks.

5. To appoint in writing some competent person to act in his place and stead during his temporary absence, or at such times as he is unable to attend to the duties of his office, and such person shall, while acting for such harbor master, have all the power and authority conferred upon and vested in the harbor master by law.

6. To collect from all vessels arriving in the port of Wilmington the following fees and no others, to wit: If over one hundred tons and under three hundred tons, three dollars; if over three hundred tons and under five hundred tons, five dollars; if over five hundred tons and under seven hundred tons, seven dollars; if over seven hundred tons, ten dollars.

Rev., s. 4958; Code, s. 3482; 1903, c. 662; 1905, c. 321.

6961. Port wardens of Wilmington; election; oath. There shall be three competent persons at the port of Wilmington, to be known as port wardens. The persons so elected shall at once take and subscribe before the clerk of the superior court of New Hanover county the following oath:

I, A. B., do solemnly and sincerely swear that I will faithfully, honestly, and impartially execute and discharge the duty of port warden for the port of Wilmington, by duly appraising and estimating the damage sustained on any vessel or goods arriving in or stranded within the bounds of said port, and will make a true and fair estimate and report of and regarding the seaworthiness of any vessel by me surveyed.

Rev., s. 4959; 1889, c. 437; 1905, c. 321.

6962. Port wardens of Wilmington; duties; fees. The port wardens of Wilmington shall, on request made by the master, owner, freighter, or supercargo of any vessel arriving in said port, or stranded within the bounds thereof, survey and make report of her situation and condition, and the causes thereof, and whether she should be repaired or condemned; inspect the conditions of vessels which may arrive in distress or may have suffered by gales of wind or otherwise at sea; the situation and condition of goods, wares, and merchandise which may arrive in said vessels or may have received damage at sea, and report thereon and the probable causes thereof; inspect the storage of cargoes of vessels arriving as aforesaid, or having received damage as aforesaid, before the same shall be discharged, except where vessels may be stranded, in which cases their cargoes may be inspected after the same are removed, and report thereon, whether faulty or not, in which report shall be stated the probable cause of the damage; make surveys of goods, wares, and merchandise, and the cargoes of vessels damaged as aforesaid, and make and report estimates of the amount of the damage sustained as aforesaid; and make and report, if required, surveys of vessels outward bound, and report whether they are seaworthy or not, and fit for the voyage intended. All goods which shall be sold by reason of their having received damage as aforesaid, and shall have been surveyed or inspected by the said port wardens, shall be

sold under their inspection and direction; and the said port wardens shall respectively receive for their services: For a survey at the town of Wilmington, the sum of ten dollars; for a survey at the Flats, the sum of twelve dollars; and for a survey at Fort Johnson, the sum of fifteen dollars, to be paid by the party at whose request the same is made, and recovered before any court of competent jurisdiction.

Rev., s. 4960; 1889, c. 437, ss. 2, 3.

6963. Repairing boats in street docks at Wilmington forbidden. If any person shall, for the purpose of repair, put any flat, steamboat, or other craft, in any of the street docks of the city of Wilmington, or shall, for the purpose of repair, ground any such flat, steamboat, or other craft in any of the public docks of such city on the east side of the Cape Fear river between Church street dock and Red Cross street dock, he shall be guilty of a misdemeanor, and shall be fined not more than fifty dollars or imprisoned not more than thirty days.

Rev., s. 3554; 1903, c. 662, s. 2.

6964. Obstructing docks by flats and barges at Wilmington forbidden. The owner of any rafts, flats, vessels, or other craft lying alongside any wharf or wharves or before the entrance of any public dock, his or their agents or servants, shall, upon notice from the harbor master, immediately remove the same, and upon his or their refusal so to do, it shall be the duty of the harbor master, and he is hereby authorized and directed, after notice as aforesaid to the owner or owners thereof, their agents or servants, forthwith to cause all such rafts, flats, vessels, or other craft to be removed at the cost and expense of such owner or owners or their agent or agents, and the owner shall be guilty of a misdemeanor.

Rev., s. 3549; 1903, c. 662, s. 3.

6965. Obstructing harbor master of Wilmington forbidden. If any person shall hinder, delay, obstruct, or in any manner wilfully interfere with the harbor master of Wilmington in the discharge of his duty he shall be guilty of a misdemeanor, and be fined not more than fifty dollars or imprisoned not more than thirty days.

Rev., s. 3552; 1903, c. 662, s. 8.

6966. Encumbering docks at Wilmington forbidden. If any person shall encumber any of the public docks of the city of Wilmington with logs, hulks, flats, or barges, trash or garbage, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined ten dollars, and if the encumbrance be not removed immediately upon notice from the harbor master, he shall be fined ten dollars for each and every day thereafter such nuisance shall remain.

Rev., s. 3547; 1903, c. 662, s. 9.

ART. 2. BEAUFORT HARBOR

6967. Commissioners of navigation; election. The commissioners of navigation for Old Topsail inlet and Beaufort harbor shall be composed of three persons, to be elected as follows: The board of commissioners of Carteret county shall elect one, the commissioners of the town of Beaufort shall elect one, and the commissioners of the town of Morehead City shall elect one. They shall be elected

at the regular meeting of such boards in June, one thousand nine hundred and five, and every two years thereafter, and shall qualify by taking the oath required by law before the clerk of the superior court or some justice of the peace of Carteret county, and enter upon the discharge of their duties on the first Monday in July following their election.

Rev., s. 4964; 1899, c. 9, ss. 1, 2.

6968. Authority of commissioners. They shall have authority in all matters that may concern the navigation of the harbor, Old Topsail inlet, and all the waters of the sound and rivers within ten miles of the town of Beaufort, and in the construction of wharves, and when there is no harbor master, the commissioners aforesaid shall decide all disputes about the moving of vessels and other matters which properly fall within the department of harbor master.

Rev., s. 4965; Code, s. 3528; 1868-9, c. 208, s. 3.

6969. Harbor master for Beaufort. The said commissioners immediately after their election shall appoint a harbor master for the port of Beaufort, who shall hold his office for the term of one year, unless sooner removed by the commissioners for neglect of duty. He shall be entitled to receive of the master of each vessel that shall enter said port, and for other services, such fees as the commissioners may prescribe.

Rev., s. 4966; Code, s. 3529; 1868-9, c. 208, s. 4.

6970. Pilots; how appointed and licensed. Such commissioners shall elect the pilots for said inlet and harbor, and may make such rules and regulations for their government as the commissioners may deem right and proper, not inconsistent with the constitution and laws of this state or of the United States. Application for pilot licenses or branches shall be made to the commissioners in writing, giving the name, age, and occupation of applicants for two years next preceding the date of application. The commissioners shall examine all applicants for pilot's licenses, and may also examine other persons as to qualification of applicants to perform the duties of pilot, and may in their discretion reject any applicant whom they may deem incompetent.

Rev., s. 4967; 1899, c. 9, ss. 3, 4, 5.

6971. Fees for issuing pilot's license. The said commissioners shall give to every pilot elected by them a license or branch under their hands and seals, which shall be and remain in force for one year unless, for good cause to said commissioners appearing, the same shall be sooner revoked by them. They shall charge for each license or branch, five dollars, which they may retain for their expenses and services.

Rev., s. 4968; 1899, c. 9, s. 6.

6972. Expiration of pilot's license; reinstatement. Each pilot shall forfeit his branch after fifteen days expiration of the same; however, such pilot may be reinstated by securing two pilots in good standing to sign his branch.

1915, c. 142, s. 3.

6973. Pilot boats to be numbered. After the first day of April, one thousand nine hundred and fifteen, each and every pilot vessel in Carteret county shall be

numbered; and any pilot after that date piloting a vessel or barge in or out of the territory as set out in this article, without a number, shall be guilty of a misdemeanor and be subject to a fine of not more than fifty dollars or imprisoned not more than thirty days, or both, in the discretion of the court. The commissioners of navigation of Beaufort harbor shall make provision for numbering of pilot vessels as required by this section. All said fines collected under this act to be applied to the public school fund of Carteret county.

1915, c. 142, ss. 2, 3.

6974. Rates of pilotage. The pilotage for Old Topsail inlet and Beaufort harbor shall be as follows: For vessels drawing eight feet and under, two dollars per foot; ten feet and over eight, two dollars and fifty cents per foot; twelve feet and over ten; three dollars and fifty cents per foot; all over twelve feet, four dollars per foot. The above fees to be collectible in Beaufort harbor from Middle marsh to Lewis thoroughfare, and from the Neuse river side of the inland waterway through the said waterway and out of Beaufort inlet. For every vessel piloted without these bounds an additional charge of fifty cents per foot may be charged. The commissioners shall have the rates of pilotage printed or written on every license or branch issued by them, and every pilot shall exhibit his license to the master of every vessel he has in charge, when demanded by said master. No vessel entering Old Topsail inlet without a pilot shall be required to take one on going to sea; nor shall any vessel be required to take a pilot that has to enter the harbor in distress. This section is applicable to all vessels including barges in tow of tugboats.

Rev., s. 4969; 1899, c. 9, ss. 7, 8; 1901, c. 639; 1909, c. 250, s. 1; 1915, c. 142, s. 1.

6975. Vessel under sixty tons not liable for pilotage. No pilot, acting under the authority of the commissioners of navigation for Old Topsail inlet, shall be entitled to pilotage for any vessel under sixty tons burden, unless such vessel shall have given a signal for a pilot, or otherwise shall have required the assistance of a pilot.

Rev., s. 4970; Code, s. 3523; R. C., c. 85, s. 33; 1801, c. 600, s. 3; 1806, c. 711, s. 1.

See *Gerrish v. Johnson*, 46-335.

ART. 3. BOGUE INLET

6976. Commissioners of navigation for Bogue inlet. The board of commissioners of the county of Onslow shall appoint five commissioners of navigation for Bogue inlet and its waters. When vacancies occur in said board, by refusal to act, by resignation, or otherwise, the remaining members of such board shall fill the same until the same be supplied by the appointing board, which is directed to be done at the first meeting after the vacancy occurs. And the said board shall have the same powers and authority as to pilots and pilotage as the commissioners for Old Topsail inlet and Beaufort harbor.

Rev., s. 4971; Code, s. 3515; R. C., c. 85, s. 25; 1783, c. 194; 1784, c. 208, s. 2; 1879, c. 216, s. 4.

6977. Rates of pilotage. The branch pilots for Bogue inlet shall be entitled to receive of the commander of such vessel as they may have charge of the following

pilotage, namely: For bringing any vessel into the said inlet, drawing less than seven feet, from the outside of the bar to the anchorage before the town, or the customary place in Hill's channel, one dollar per foot; for a vessel drawing more than seven feet, one dollar and fifty cents per foot; and the same fees for pilotage outward as inward.

Rev., s. 4972; Code, s. 3535; 1889, c. 121.

ART. 4. HATTERAS AND OCRACOE

6978. Board of commissioners of navigation; organization; oaths; pilots' licenses. John W. Rolinson, R. R. Quidley, George L. Styron, William Balance, and Charles L. Odine shall constitute a board of commissioners of navigation for the port of Hatteras inlet, of the county of Dare; William E. Howard, Christopher O. Neal, Sr., and Gilbert O. Neal, of the county of Hyde; D. R. Roberts and J. W. Gilgo, of the county of Carteret, shall constitute a board of navigation for the port of Ocracoke inlet, whose duty it shall be to meet at Hatteras and Ocracoke respectively three times in each year, or a majority of the respective board, after giving at least twenty days notice of each meeting, and when any person is desirous of becoming a pilot at Hatteras or Ocracoke inlets, over the Swashes through Pamlico and Albemarle sounds, he shall be examined by said board, and when found competent to take charge of any ship or vessel as a pilot the board shall issue to him a branch and take the bond authorized by law, and no person shall be authorized to act as a bar or swash pilot unless he shall have a branch from said boards. The said boards shall have their offices at Hatteras and Ocracoke respectively, in which shall be filed the bonds of the pilots, and every pilot receiving a branch from said boards shall pay to the board from which he receives such branch two dollars and fifty cents, of which sum the commissioners of Ocracoke who live in Carteret county shall receive ten cents per mile traveling to and from the meeting of said board, and the residue shall be divided between all the members of said board, and the commissioners shall belong to each board respectively. When a vacancy shall occur in either board by death, resignation, or refusal to act, a majority thereof of each board shall appoint some suitable person thereto, whose residence shall be at the same place where the vacancy occurred; said commissioners shall keep a regular journal of their proceedings, and before entering on the duties of their office they shall take and subscribe before any justice of the peace of the counties of Dare, Carteret, or Hyde the following oath:

I do solemnly swear that I will truly and faithfully and impartially examine every person who shall apply to me for a branch, to the best of my ability: so help me, God.

The branch shall expire in three years from the date thereof.

Rev., s. 4961; Code, s. 3512; R. C., c. 85, s. 24; 1871-2, c. 134; 1897, c. 211; 1879, c. 216.

6979. Rates of pilotage. Branch pilots of Ocracoke or Hatteras shall be entitled to receive of the commander of such vessel as they may have in charge the following pilotage, namely: For every vessel of sixty and not over one hundred and forty tons burden, from the other side of the bar, at any place within the limits of the pilot ground, to Beacon Island road, or Wallace's channel, ten cents for each ton, and the further sum of two and a half cents for each ton over one

hundred and forty, and two dollars for each vessel over either of the swashes (that is, over said swashes either to or from Beacon Island road, or Wallace's channel, or over any shoal lying intermediate between either of said swashes and Beacon Island road or Wallace's channel); for every ship or vessel from the mouth of the swash to either of the ports of New Bern or Washington, one dollar per foot, and for every ship or vessel from the same place to the port of Edenton, twelve dollars; and to the port of Elizabeth City, ten dollars; and the same allowance down as up, and outward as inward.

Rev., s. 4962; Code, s. 3524; R. C., c. 85, s. 34; 1794, c. 426; 1806, c. 711; 1846, c. 49, ss. 1, 2, 3.

See *Gerrish v. Johnson*, 46-335.

6980. Who may be pilots for Hatteras or Ocracoke inlet. The said boards shall not issue or grant any branch to pilot vessels through Hatteras inlet to any person who does not reside in Hatteras precinct, which precinct extends from Cape Hatteras lighthouse to Hatteras inlet. And the said boards shall not issue or grant a branch to pilot vessels through or over Ocracoke inlet to any person who does not reside upon the island of Ocracoke or in the precinct of Portsmouth.

Rev., s. 4963; Code, s. 3514; 1856-7, c. 29; 1879, c. 216, s. 3.

ART. 5. GENERAL PROVISIONS

6981. Obstructing navigable waters; removing beacons; penalty; pilot's liability. If any person shall cast or throw from any vessel, into the navigable waters of Carteret or Onslow counties, of Tar or Pamlico rivers, or into the navigable waters of the Cape Fear, or any other river in the state, or into any channel of navigable water elsewhere than in a river, any ballast, stone, shells, earth, trash, or other substance likely to be injurious to the navigation of such waters, rivers, or channel; or if any person shall wilfully pull down any beacon, stake, or other mark, erected or placed by virtue of any by-law, order, or regulation passed or ordained by any commissioners of navigation, he shall be guilty of a misdemeanor and shall forfeit and pay two hundred dollars, to be recovered for the use of the commissioners in whose waters the offense was committed. If any pilot shall knowingly suffer any such unlawful act to be done, and shall not within ten days thereafter give to the said commissioners, or one of them, information thereof, such pilot shall likewise be guilty of a misdemeanor; and, besides the usual punishment of such offense, on conviction, shall be forever incapable of acting as a pilot in the state.

Rev., s. 3560; Code, ss. 3537, 3538; R. C., c. 85, ss. 40, 41; 1833, c. 146; 1784, c. 206, s. 11; R. S., c. 88, ss. 23, 24, 45; 1811, c. 839; 1842, c. 65, s. 4; 1846, c. 60, s. 3.

Section cited in *State v. Eason*, 114-796.

6982. Local: Obstructing waters of Currituck sound. It shall be unlawful for any person to obstruct navigation in the waters of Currituck sound and tributaries, and all persons, corporations, companies, or clubs, who have heretofore placed or caused to be placed any hedging across the mouth of a bay, creek, strait, or lead of water in Currituck sound or tributaries, made of iron, wire, or wood or other material, for the purpose of preventing the free passage of boats or vessels of any size or class, or to stop the public use of such bay, creek, strait, or lead of water, are required to forthwith remove the same. Any person, corpora-

tion, or club violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars nor less than ten dollars, or imprisoned not more than thirty days, at the discretion of the court.

Rev., s. 3553; 1897, c. 277.

6983. Local: Lumbermen to remove obstructions in Albemarle sound. If any lumberman shall fail to remove all obstructions placed by him in the waters of Albemarle sound and its tributaries, as soon as practicable, after they have ceased to use them for the purpose for which they were placed in said waters, from all places where the water is not less than two feet deep, and also from all landing places on both sides, for the space of sixty feet from the shore outward, he shall be guilty of a misdemeanor, and fined not less than one dollar nor more than fifty dollars, at the discretion of the court.

Rev., s. 3551; Code, s. 3303; 1880, c. 37, ss. 1, 2.

6984. Anchoring in range of lighthouses. If the master of any vessel shall anchor on the range line of any range of lights established by the United States lighthouse board, unless such anchorage is unavoidable, he shall be guilty of a misdemeanor, and punished by a fine not to exceed fifty dollars.

Rev., s. 3550; Code, s. 3086; 1883, c. 165, s. 2.

6985. Vessels on inland waterways exempt from pilot laws; proviso as to steam vessels. All vessels, barges, schooners, or other craft passing through the inland waterway of this state, when bound to a port or ports in this or any other state, be and the same are hereby exempt from the operations of the pilot laws of North Carolina and are not compelled to take a state licensed pilot: Provided, that steam vessels not having a United States licensed pilot for the waters navigated on board shall be subject to the state pilot laws.

1917, c. 33, s. 2.

6986. Bond of pilot. Every person, before he obtains a commission or a branch to be a pilot, shall give bond with two sufficient sureties payable to the state of North Carolina, in the sum of five hundred dollars, with condition for the due and faithful discharge of his duties, and the duties of his apprentices; and the body appointing such pilot may, from time to time, and as often as they may deem it necessary, enlarge the penalty of the bond, or require new and additional bonds to be given; and every bond taken of a pilot shall be filed with, and preserved by, the said body appointing such pilot in trust for every person that shall be injured by the neglect or misconduct of such pilot, or his apprentices; who may severally bring suit thereon for the damage by each one sustained.

Rev., s. 307; Code, s. 3487; R. C., c. 85, s. 6; 1784, c. 207, s. 3.

For action on official bond, see section 354.

6987. Pilots to have spyglasses. Every pilot, within such convenient time as the commissioners may direct, who has control over the waters within which he acts, shall furnish himself with a good telescope or spyglass, under the penalty of fifty dollars, to be paid to the commissioners.

Rev., s. 4973; Code, s. 3517; R. C., c. 85, s. 27; 1790, c. 320, s. 3.

6988. Penalty for acting as pilot without license. If any person shall presume to act as pilot, who is not qualified and licensed in the manner herein prescribed, he shall forfeit and pay, for the use of the commissioners, forty dollars for every attempt at piloting: Provided, that should there be no pilot in attendance, any person may conduct into port any vessel in danger from stress of weather or in a leaky condition.

Rev., s. 4974; Code, s. 3519; R. C., c. 85, s. 29; 1783, c. 194, s. 3; 1784, c. 208, s. 4.

See *Gerrish v. Johnson*, 46-335.

6989. Penalty on pilot neglecting to go to vessel having signal set. When any pilot shall see any vessel on the coast, having a signal for a pilot, or shall hear a gun of distress fired off the coast, and shall neglect or refuse to go to the assistance of such vessel, such pilot shall forfeit and pay one hundred dollars, to be recovered in the name of the state, one-half to the use of the informer and the other half to the master of the vessel, unless such pilot is then actually in charge of another vessel.

Rev., s. 4975; Code, s. 3521; R. C., c. 85, s. 31; 1784, c. 207, s. 10; 1790, c. 320, s. 2; 1783, c. 194, s. 6.

6990. Pilots may be removed. Unless otherwise provided in the first article of this chapter for the Cape Fear river, whenever any pilot appointed, as authorized in this chapter, shall, on trial, be found incompetent, or shall be guilty of improper conduct by intoxication or otherwise, or of any misbehavior in his office, or shall absent himself from the state for a period of six months, the pilot so offending may be removed from his office by the board of commissioners under whose authority he is acting, by a notice to him in writing; and if after such removal he shall attempt to take charge of any vessel, he shall forfeit and pay two hundred dollars for the use of said board. And it shall be the duty of the board to put up a written notice of the removal, in the public places within the port, or publish it in some convenient newspaper. But no pilot for the navigation of Hatteras inlet shall be required to surrender or forfeit his branch by reason of absence from the state for a period of less than six months.

Rev., s. 4976; Code, ss. 3518, 3490; 1869-70, c. 235, s. 7; 1881, c. 261, s. 2; R. C., c. 85, s. 28; R. S., c. 88, ss. 7, 31, 35; 1784, c. 207, s. 4; 1819, c. 1025, s. 4; 1800, c. 565; 1876-7, c. 22; 1881, c. 261, s. 1.

A duly licensed pilot, who is guilty of an act for which his license may be revoked, is entitled to his fees until such revocation: *Davis v. Heide*, 161-476.

6991. Pilots refused, entitled to pay. If a branch pilot shall go off to any vessel bound in, and offer to pilot her over the bar, the master or commander of such vessel, if he refuses to take such pilot, shall pay to such pilot, if not previously furnished with one, the same sum as is allowed by law for conducting such vessel in, to be recovered before a justice of the peace, if the sum be within his jurisdiction: Provided, that the first pilot, and no other, who shall speak such vessel so bound in shall be entitled to the pay provided for in this section.

Rev., s. 4978; Code, s. 3522; R. C., c. 85, s. 32; 1871-2, c. 117.

See *Gerrish v. Johnson*, 46-335; *Saulter v. Steamship Co.*, 88-126; *St. George v. Hardie*, 147-88.

6992. Pay of pilots when detained by vessel. Every master of a vessel who shall detain a pilot at the time appointed, so that he cannot proceed to sea, though wind and weather should permit, shall pay to such pilot three dollars per day during the time of his actual detention.

Rev., s. 4979; Code, s. 3495; 1858-9, c. 23, s. 7.

6993. Rates of pilotage annexed to commission. The commissioners of navigation for the several ports of this state shall annex to the branch or commission, by them given to each pilot, a copy of the fees to which such pilot is entitled.

Rev., s. 4980; Code, ss. 3497, 3536; R. C., c. 85, ss. 9, 38; 1784, c. 208, s. 4; 1796, c. 470, s. 5.

6994. Harbor masters; how appointed. The several boards of commissioners of navigation may appoint a harbor master for their respective ports. They shall appoint a clerk to keep books, in which shall be recorded all their proceedings.

Rev., s. 4981; Code, s. 3525; R. C., c. 85, s. 35.

6995. Commissioners of navigation may hold another office. A commissioner of navigation and pilotage shall be deemed a commissioner for a special purpose within the meaning of section seven of article fourteen of the constitution of North Carolina, so as not to be prohibited from holding at the same time with his commissionership another office under the national or state governments.

Ex. sess. 1913, c. 76.

6996. Commissioners of navigation to designate place for trash. The several boards of commissioners established by this chapter may, subject to such regulations as the United States may make, designate the places whereat, within the waters under their several and respective control, may be cast and thrown ballast, trash, stone, and like matter.

Rev., s. 4982; Code, s. 3537; R. C., c. 85, s. 40; R. S., c. 88, ss. 23, 24, 45; 1833, c. 146, ss. 1, 2, 3; 1846, c. 60, s. 3.

Referred to in *State v. Eason*, 114-787.

6997. Harbor master; how appointed where no board of navigation. Where no board of navigation exists the governing body of any incorporated town, situated on any navigable water course, shall have power to appoint a harbor master for the port, who shall have the same power and authority in their respective ports as the harbor master of Wilmington is by this chapter given for that port, and shall receive like fees and no others.

Rev., s. 4983.

NOTE.—For liens on vessels for tonnage, etc., see *Liens*.

6998. Rafts to exercise care in passing buoys, etc.; penalty. If any person having charge of any raft passing any buoy, beacon, or day-mark, shall not exercise due diligence in keeping clear of it, or, if unavoidably fouling it, shall not exercise due diligence in clearing it, without dragging from its position such buoy, beacon, or day-mark, he shall be guilty of a misdemeanor, and punished by fine not to exceed fifty dollars.

Rev., s. 3545; Code, s. 3087; 1883, c. 165, s. 3.

6999. Interfering with buoys, beacons, and day-marks. If any person shall moor any kind of vessel, or any raft or any part of a raft, to any buoy, beacon, or day-mark placed in the waters of North Carolina by the authority of the United States lighthouse board, or shall in any manner hang on with any vessel or raft, or part of a raft, to any such buoy, beacon, or day-mark, or shall wilfully remove, damage, or destroy any such buoy, beacon, or day-mark, or shall cut down, remove, damage, or destroy any beacon erected on land in this state by the authority of the said United States lighthouse board, or through unavoidable accident run down, drag from its position, or in any way injure any buoy, beacon, or day-mark, as aforesaid, and shall fail to give notice as soon as practicable of having done so, to the lighthouse inspector of the district in which said buoy, beacon, or day-mark may be located, or to the collector of the port, or, if in charge of a pilot, to the collector of the port from which he comes, he shall for every such offense be guilty of a misdemeanor and shall be punished by a fine not to exceed two hundred dollars, or imprisoned not to exceed three months, or both, at the discretion of the court.

Rev., s. 3546; Code, s. 3085; 1858-9, c. 58, ss. 2, 3; 1883, c. 165, s. 1.

CHAPTER 115

PAWNBROKERS

SEC.

- 7000. Pawnbroker defined.
- 7001. License; business confined to municipalities.
- 7002. Municipal authorities to grant and control license; bond.
- 7003. Records to be kept.
- 7004. Pawn ticket.
- 7005. Sale of pledges.
- 7006. Usury law applicable.
- 7007. Violation of chapter misdemeanor.

7000. Pawnbroker defined. Any person, firm, or corporation who shall engage in the business of lending or advancing money on the pledge and possession of personal property, or dealing in the purchasing of personal property or valuable things on condition of selling the same back again at stipulated prices, is hereby declared and defined to be a pawnbroker.

1915, c. 198, s. 1.

7001. License; business confined to municipalities. No person, firm, or corporation shall engage in the business of lending money, or other things, for profit or on account of specific articles of personal property deposited with the lender in pledge in this state, which business is commonly known as that of pawnbrokers, except in incorporated cities and towns, and without first having obtained a license to do so from such incorporated cities and towns, and by paying the county, state, and municipal license tax required by law, and otherwise complying with the requirements made in this and succeeding sections.

1915, c. 198, s. 1.

For license tax required, see section 7816.

7002. Municipal authorities to grant and control license; bond. The board of aldermen, or other governing body, of any city or town in this state may grant to such person, firm, or corporation as it may deem proper, and who shall produce satisfactory evidence of good character, a license authorizing such person, firm, or corporation to carry on the business of a pawnbroker, which said license shall designate the house in which such person, firm, or corporation shall carry on said business, and no person, firm, or corporation shall carry on the business of a pawnbroker without being duly licensed, nor in any other house than the one designated in the said license. Every person, firm, or corporation so licensed to carry on the business of a pawnbroker shall, at the time of receiving such license, file with the mayor of the city or town granting the same, a bond payable to such city or town in the sum of one thousand dollars, to be executed by the persons so licensed and by two responsible sureties, or a surety company licensed to do business in the state of North Carolina, to be approved of by such mayor, which said bond shall be for the faithful performance of the requirements and obligations pertaining to the business so licensed. The board of aldermen, or other governing body, shall have full power and authority to revoke such license and sue for forfeiture of the bond upon a breach thereof. Any person who may obtain a judgment against a pawnbroker and upon which judgment execution is

returned unsatisfied, may maintain an action in his own name upon the said bond of said pawnbroker, in any court having jurisdiction of the amount demanded, to satisfy said judgment.

1915, c. 198, s. 2.

7003. Records to be kept. Every pawnbroker shall keep a book in which shall be legibly written, at the time of the loan, an account and description of the goods, articles or things pawned or pledged, the amount of money loaned thereon, the time of pledging the same, the rate of interest to be paid on said loan, and the name and residence of the person pawning or pledging the said goods, articles, or things.

1915, c. 198, s. 3.

7004. Pawn ticket. And every such pawnbroker shall at the time of each loan deliver to the person pawning or pledging any goods, articles, or things a ticket or memorandum or note signed by him containing the substance of the entry required to be made by him in his book as aforesaid, and a copy of the said ticket, memorandum, or note so given to the person pawning or pledging any goods, articles, or things of value, shall be filed within forty-eight hours in the office of the chief of police of the city or town issuing the license to such pawnbroker. The said tickets or memorandums so issued shall be numbered consecutively and dated the day issued.

1915, c. 198, s. 3.

7005. Sale of pledges. No pawnbroker shall sell any pawn or pledge until the same shall have remained sixty days in his possession after the maturity of the debt for which the property was pledged. And no pawnbroker shall advertise or sell at his place of business as unredeemed pledges any articles of property other than those received by him as pawns or pledges in the usual course of his business at the place where he is licensed to do business.

1915, c. 198, s. 4.

7006. Usury law applicable. The provisions of this chapter shall not be construed to relieve any person from the penalty incurred under the laws against usury in this state.

1915, c. 198, s. 5.

For usury penalty, see section 2306.

7007. Violation of chapter misdemeanor. Any person, firm, or corporation violating the provisions of this chapter shall be guilty of a misdemeanor and fined or imprisoned, or both, in the discretion of the court.

1915, c. 198, s. 5.

CHAPTER 116

PUBLIC ACCOUNTANTS

SEC.

- 7008. State board of accountancy created.
- 7009. Terms of members; appointment of successors.
- 7010. Duties of board.
- 7011. Organization of board; officers; quorum.
- 7012. Bond of treasurer.
- 7013. Record and reports of board.
- 7014. Board to grant certificates.
- 7015. Prerequisites for certification.
- 7016. Times of examinations for applicants.
- 7017. Fees for certification; reexamination.
- 7018. Pay of board.
- 7019. Disposition of fees by board.
- 7020. Certification without examination; public accountant defined.
- 7021. Certification from other states or countries.
- 7022. Revocation of certificates.
- 7023. Practice without certificate misdemeanor.
- 7024. Chapter not applicable to officers of state or municipality.

7008. State board of accountancy created. Within thirty days after the passage of this act the governor shall appoint four persons to constitute a state board of accountancy. Three members of said board shall be persons skilled in the knowledge and practice of accounting and actively engaged as professional accountants within the state of North Carolina, and the other a recognized attorney of the state; being of good standing as such.

1913, c. 157, s. 1.

7009. Terms of members; appointment of successors. The members of such board shall hold office for three years or until their successors are appointed and have qualified, except that of the members first appointed under this chapter one shall hold office for one year, one for two years, and two for three years. The term of office for each to be designated by the governor in his appointment. Upon the expiration of the terms of each of the members first appointed a member shall be appointed by the governor for the term of three years, and after this date the members of the board shall be appointed from among the holders of certificates issued under this chapter.

1913, c. 157, s. 2.

7010. Duties of board. The board shall determine the qualifications of persons applying for certificates under this chapter, and make rules for the examination of applicants and the issue of certificates herein provided for.

1913, c. 157, s. 3.

7011. Organization of board; officers; quorum. The board shall organize by the election of one of its members as president, one member as secretary, and one

member as treasurer, but the office of secretary and treasurer may be held by one person. A majority of the board shall constitute a quorum, and the vote of three members shall be considered as the action of the board.

1913, c. 157, ss. 4, 7.

7012. Bond of treasurer. The treasurer shall give bond to the state in such sum as may be determined by the board.

1913, c. 157, s. 5.

7013. Records and reports of board. The board shall keep a complete record of all its proceedings, and shall annually submit a full report to the governor.

1913, c. 157, s. 6.

7014. Board to grant certificates. The board shall grant certificates of qualification to such applicants as may, upon examination, be qualified in "theoretical" and "practical" accounting, "auditing," "commercial law" as affecting accountancy, and in such other subjects as the board may deem advisable.

1913, c. 157, s. 7.

7015. Prerequisites for certification. Any citizen of the United States, or person who has duly declared his intention of becoming such citizen, over the age of twenty-one years, of good moral character, being a graduate of a high school or having had an equivalent education, who has had at least three years experience in the practice of accounting, and has passed a satisfactory examination as herein provided, shall be entitled to a certificate to practice accounting and shall be styled and known as a certified public accountant.

1913, c. 157, s. 8.

7016. Times of examinations for applicants. The examination shall be held as often as may be necessary in the opinion of the board, and at such times and places as it may designate, but not less frequently than in each calendar year.

1913, c. 157, s. 9.

7017. Fees for certification; reexaminations. The board shall charge for each examination and certificate provided for in this chapter a fee of twenty-five dollars. This fee shall be payable to the treasurer of the board by the applicant at the time of filing application. In no case shall the examination fee be refunded, but said applicant may be reexamined within eighteen months from the date of his application without payment of an additional fee.

1913, c. 157, s. 10.

7018. Pay of board. The members of the board to be appointed under the provisions of this chapter shall be paid for the time actually expended in pursuance of the duties imposed upon them by this chapter an amount not exceeding ten dollars per day, and they shall also be entitled to necessary traveling expenses.

1913, c. 157, s. 11.

7019. Disposition of fees by board. From the fees collected the board shall pay all expenses incident to the examination to be held under this chapter, the ex-

penses of preparing and issuing certificates, the traveling expenses of examiners and their compensation while performing their duties; but no expense incurred under this chapter shall be charged against the state. Any surplus arising shall, at the end of each year, be deposited by the treasurer of the board with the state treasurer to the credit of the general fund.

1913, c. 157, s. 12.

7020. Certification without examination; public accountant defined. Any public accountant who files his application (and be it understood that by "public accountant" is meant one actively engaged and practicing accountancy as his principal vocation during the business period of the day) within ninety days after the organization of the board, and is at the time of filing his application a public accountant, and has practiced as such for at least three years next preceding the date of his application, the last six months of which has been in the state of North Carolina, shall file with his application proofs of said facts. The board shall consider the proofs and such other evidence as may be procured, and if it be satisfied that the statements contained in the application and proofs are true, and that the applicant is of good moral character, it shall accept the foregoing evidence in lieu of examination and grant the applicant a certificate.

1913, c. 157, s. 13.

7021. Certificates from other states or countries. Any citizen of the United States or person who has declared his intention of becoming such citizen, over twenty-one years of age, of good moral character, and who has complied with the rules and regulations of the board pertaining to such cases, and who holds a valid and unrevoked certificate as a certified public accountant, or the equivalent thereof, issued by or under the authority of any other state of the United States, or of the United States, or the District of Columbia, or any territory of the United States, or by or under the authority of a foreign nation, when the board shall be satisfied that their standards and requirements for a certificate as a certified public accountant are substantially equivalent to those established by this chapter, may, at the discretion of the board, receive a certificate as a certified public accountant, and such person may thereafter practice as a certified public accountant and assume and use the name, title, and style of "Certified Public Accountant," or any abbreviation or abbreviations thereof, in this state: Provided, however, that such other state or nation extends similar privileges to certified public accountants of this state.

1913, c. 157, s. 14.

7022. Revocation of certificates. The board may revoke any certificate issued under this chapter for sufficient cause if written notice has been mailed to the holder of such certificate at his last known address at least twenty days before any hearing thereof, stating the cause of such contemplated action, and appointing a time for a hearing thereon by the board. But no certificate issued under this chapter may be revoked until such hearing has been had. At all such hearings the attorney-general of the state or one of his assistants designated by him shall sit with the board with all the powers and pay of a member thereof.

1913, c. 157, s. 15.

7023. Practice without certificate misdemeanor. If any person shall represent himself as having received a certificate as provided in this chapter, or shall practice as a certified public accountant, or use the abbreviation "C. P. A." (without specifying the state that granted said certificate), or in similar words or letters to indicate that the person using the same is qualified to practice in this state as a certified public accountant, without having received such certificate as provided for by this chapter, or if any person having received a certificate as provided for in this chapter, and having thereafter lost such certificate by revocation as herein provided, shall practice as a certified public accountant, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty dollars and not exceeding two hundred dollars for each offense.

1913, c. 157, s. 16.

7024. Chapter not applicable to officers of state or municipality. Nothing contained in this chapter shall be construed to restrict or limit the power or authority of any state, county, or municipal officer or appointee engaged in or upon the examination of the accounts of any public officer, his employees or appointees.

1913, c. 157, s. 17.

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CHAPTER 117

PUBLIC BUILDINGS AND GROUNDS

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ART. 1. OFFICERS IN CHARGE

7025. Board of public buildings; keeper of capitol. The board of public buildings and grounds shall appoint a keeper of the capitol, public grounds and arsenal, who shall hold his office until his successor is appointed and files his bond, as required in the chapter entitled Bonds. The keeper of the capitol shall perform all the duties and have all the rights as hereinafter prescribed. As to the manner of performing his duties he shall be under the general direction of a board known as the board of public buildings and grounds, consisting of the governor, secretary of state, treasurer, and attorney-general; but he shall have the absolute right to appoint and control all lawful subordinates, such as watchmen of the capitol, workmen on the grounds, domestic servants for the executive mansion, and servants about the capitol and its appurtenances, except the servant and messenger waiting and attending upon the supreme court. And, with the approval of the marshal of the supreme court, he shall appoint one janitor, but not more than one, of the supreme court building, whom he shall, in like manner, have the right to remove: Provided, that the compensation of the domestic servants shall not exceed seven hundred and fifty dollars per annum.

Rev., s. 5006; Code, s. 2301; 1899, c. 482; 1870-1, cc. 8, 175; 1880, c. 61; 1909, c. 860.

Office-holding case: Cherry v. Burns, 124-761.

7026. Bond of keeper of capitol. Before entering upon the duties of his office the keeper of the capitol shall execute a bond, with good security, in the sum of two hundred and fifty dollars, payable to the state of North Carolina, and conditioned for the faithful discharge of his duties. The bond shall be deposited in the office of secretary of state, and be renewed every two years under the care of the board of public buildings; and shall be put in suit whenever in their judgment the conditions thereof, or any of them, may have been broken; and the same shall not be discharged until the whole penalty is exhausted in damages.

Rev., s. 291; Code, s. 2306; R. C., c. 103, s. 6.

For actions on official bonds, see section 354.

7027. Duties of the board and the keeper. The board of public buildings and grounds shall take charge of and keep in repair the public buildings of the state in the city of Raleigh; shall, from time to time, as the same may be needed, procure, furnish, and keep in repair for the halls of the senate and house of representatives and the public offices of the capitol all necessary furniture. The keeper shall take care of the furniture, sweep and cleanse off cobwebs and dust from all the unoccupied parts of the buildings; keep the keys of the several doors not occupied as offices, and conduct visitors through the capitol, whenever requested to do so; shall, under the direction of the board, trim or remove trees standing in the public square, and remove the leaves and other rubbish as often as may be necessary; and shall perform any other duty required by this chapter, of which he is capable, whenever especially ordered by the board to do so. The board at all times is required to use such means as may secure the capitol from fire.

Rev., s. 5008; Code, s. 2303; R. C., c. 103, s. 3.

7028. Arsenal provided. The board of public buildings and grounds shall provide a suitable building for an arsenal. The governor may make such provision as he may deem necessary for the care and issue of property and for guarding and protecting the arsenal.

Rev., s. 5007; Code, s. 2302; 1870-1, c. 175, s. 3; 1917, c. 200, s. 96.

NOTE.—See Militia, s. 6876.

7029. Accounts for labor audited. No account for work or labor done on the capitol square or public grounds in the city of Raleigh, or in the senate chamber, or house of representatives, or in any room or office in the capitol, or in any building connected with the square or grounds, shall be audited or paid until the same is sworn to before the secretary of state, to be just and true, and so certified by that officer. Nor shall the secretary of state certify the account of any laborer for work done or services rendered in any of such buildings or on any of such grounds, unless it be made to appear that such laborer or employee has been employed by the keeper of the capitol.

Rev., s. 5017; Code, s. 2310; 1870-1, c. 80, s. 2.

7030. Accounts for fuel audited. No account for fuel shall be audited or paid until the claimant make oath, as in the preceding section, that the account is

just and true, and that the number of cords of wood, or tons of coal, charged for, have been delivered to the authorities authorized to receive the same at the public building.

Rev., s. 5018; Code, s. 2311; 1870-1, c. 80, s. 3.

ART. 2. PUBLIC BUILDINGS

7031. Rooms assigned in capitol. The rooms of the capitol, other than the senate chamber and house of representatives, shall be appropriated as follows: The two west rooms of the southern division of the capitol shall be appropriated to the executive; the two east rooms in the southern division shall be appropriated to the treasurer; the two east rooms in the northern division shall be appropriated to the secretary of state, and the two rooms opposite to the auditor; the upper room in the east wing to the insurance commissioner; and the room number three, in the west wing, shall be appropriated and set apart to the enrolling clerks of the general assembly. The other rooms shall be used for state purposes under the direction of the board of public buildings.

Rev., s. 5010; Code, s. 2305; R. C., c. 103, s. 5; 1885, c. 121, s. 8.

For relocation of Department of Insurance, see s. 7036.

7032. Custodian of administration building. The judges of the supreme court, the state librarian, and the secretary of the state historical commission shall appoint a custodian of the administration building, who shall hold his office until his successor is appointed. The custodian shall, under the general direction of the officials above named, have the management and control of the administration building, take care of the furniture and keep clean all parts of the building, keep the keys to the several rooms not occupied as offices, conduct visitors through the building whenever requested to do so, and perform any other duty, of which he is capable, whenever especially ordered by the above officials to do so.

1913, c. 96, s. 1.

NOTE.—For compensation, see Salaries and Fees, s. 3881.

7033. Custodian to employ assistants. The custodian of the administration building is empowered to employ such laborers and assistance as is needed to keep the building clean and in order to run the elevators: Provided, that the number of laborers and the wages paid shall be approved by the board of public buildings and grounds and be paid by the keeper of the capitol as other laborers are paid.

Ex. sess. 1913, c. 67.

7034. Rooms assigned in administration building. The first floor of the state administration building shall be occupied by the state library; the second floor by the hall of history, hall of records and portraits, and the North Carolina historical commission; the third floor by the supreme court, the clerk of the supreme court, and the attorney-general; the fourth floor by the supreme court library and the supreme court records, and the basement of the building shall be used for storing the printed journals of the general assembly, printed laws, supreme court reports, the publications of the board of trustees of the state library and of the historical commission, and for such other purposes as the board of public buildings and grounds may direct.

1913, c. 99, s. 1.

7035. Custodian and janitor of state departments building. The building formerly occupied by the supreme court and the state library and others shall be designated as the State Departments Building. The board of public buildings and grounds is authorized to employ a custodian and a janitor for such building.

1915, c. 187, ss. 1, 2.

NOTE.—For compensation, see Salaries and Fees, s. 3881.

7036. Rooms assigned in state departments building. The first floor of the state departments building shall be occupied by the corporation commission and the state tax commission, if created. The second floor shall be occupied by the departments of labor and printing and public instruction. The third floor shall be occupied by the department of insurance. The fourth floor shall be occupied by the board of health. The basement of the building shall be used as a store-room for the departments occupying the building and used as may be necessary by them.

1913, c. 99, s. 2; 1915, c. 187, s. 1.

7037. Building for department of agriculture. The building commission is authorized to contract for or have erected on the site of the present agricultural building site a building suitable for the department of agriculture and the work it is authorized to promote. The said building commission is hereby authorized to construct such building at such time as they deem advisable at a cost not to exceed two hundred and fifty thousand dollars, to be provided for by this general assembly. One entire floor of the building shall be fitted up in committee rooms for the committees of the general assembly with necessary cloak and lavatory rooms.

1919, c. 203.

7038. Agricultural building. The rooms in the agricultural building shall be used by the department of agriculture and for a museum.

Rev., s. 5012; 1893, c. 228; 1913, c. 99, s. 2.

7039. No sleeping apartments in certain buildings. The rooms in the capitol and supreme court building shall not be used as sleeping apartments, and no beds shall be kept in any room save only that used by the keeper; and he shall remove all beds and sleeping couches which may be introduced by any person into any of the rooms; and shall take charge of and keep all the keys of the rooms, except only such as are used by the heads of the departments; and of them for such time as they are not so used.

Rev., s. 5013; Code, s. 2304; R. C., c. 103, s. 5; 1842, c. 54.

ART. 3. PUBLIC GROUNDS

7040. Keeper of capitol supervisor of public lots. The keeper of the capitol is appointed supervisor of all the other public lots belonging to the state in the city of Raleigh, except such as may be occupied by the institution for the deaf and dumb, and the public schools, and Moore and Nash squares, and such other vacant lots as are by this chapter placed in charge of the city of Raleigh, and he is authorized to lease such lots or such parts thereof as it may be proper to lease, and upon such terms as may be reasonable and proper, for the period of

twelve months, and he is required to turn over the proceeds of such renting to the governor whenever the same be demanded, after retaining for his services ten per cent thereof.

Rev., s. 5009; Code, ss. 2312, 2314; 1870-1, c. 282, s. 3; 1871-2, c. 205.

7041. Repair of walks. Whenever the walks in and immediately around the capitol square become so worn by action of the weather or other causes that in the judgment of the board of public buildings they should be repaired, relocated, or resurveyed, the board is authorized to direct the keeper of the capitol to contract for suitable material for such repairs; but the work shall be done by convict labor as far as the same can be used; and the auditor shall audit the accounts for said material and labor on the approval of the board of public buildings and the keeper of the capitol; and the board is authorized and empowered to use such brick and other material from the state's prison as is not otherwise appropriated and such labor from the state's prison as may not otherwise be employed as may be necessary for such repair.

Rev., s. 5014; Code, s. 2316; 1881, c. 325, ss. 1, 2; 1905, c. 509.

7042. Work of convicts on public grounds. The superintendent and board of directors of the state's prison are authorized, upon application by the board of public buildings and grounds, to furnish not more than four trustees from the state's prison, to be worked, under the supervision of the board of public buildings and grounds, on the grounds of the capitol and mansion squares. The state's prison shall be given credit by the state for the time made by such convicts.

1911, c. 149.

7043. Appropriation for public grounds. A sum not exceeding six hundred dollars shall be set apart annually, out of any money in the treasury not otherwise appropriated, which may be used in caring for the capitol square and public grounds in the city of Raleigh.

Rev., s. 5016; Code, s. 2309; 1887, c. 409, s. 12; 1870-1, c. 80.

7044. Moore and Nash squares and other public lots. The board of aldermen of the city of Raleigh shall have power to grade, lay out in walks, plant with trees, shrubbery, and flowers, and otherwise adorn Moore square and Nash square in said city, so as to make the same an ornament to the city, and to that end they shall have the general charge and management of those squares. They may improve in like manner any of the vacant lots belonging to the state within the city limits not otherwise specially appropriated. But they shall not have power to prevent the free access of well-behaved persons to such squares and lots except at unreasonable hours or for some temporary purpose specially to be designated by the board.

Rev., s. 5015; Code, ss. 2314, 2315; 1871-2, c. 205, ss. 1, 2.

7045. Trespass upon public grounds. If any person shall wilfully trespass upon any of the public lots belonging to the state in the city of Raleigh, or shall cut any timber or commit any waste, or shall refuse to surrender possession after the expiration of their leases, or if any person in possession of any of said lots above mentioned shall refuse to leave the same and shall further refuse to surrender possession within ten days after demand made by the keeper of the

capitol, said person shall be guilty of a misdemeanor; and it shall be the duty of said keeper of the capitol to report all such violations of law to the governor or to the attorney-general, and if any of the said persons shall be convicted, they shall be fined or imprisoned at the discretion of the court.

Rev., s. 3745; Code, s. 2313; 1870-1, c. 282, s. 4.

7046. Injuring trees in capitol square. No person shall drive, screw, or otherwise insert any nails, screws, or other devices into or upon any of the trees in the capitol square in the city of Raleigh for any purpose whatsoever, and any person violating this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars or imprisoned not more than ten days: Provided, this section shall not apply to preparing or repairing the small houses and drinking fountains for the squirrels in said park.

1907, c. 67, s. 1.

7047. Metallic support for wires. All electric light companies, telephone companies, or any person requiring support for wires or cables, shall use such iron or metallic poles as may be prescribed by the board of public buildings and grounds, for supporting said wires within the capitol square, or shall be required to place said wires or cables in underground conduits at the direction of the board of public buildings and grounds.

1907, c. 67, s. 3.

CHAPTER 118

PUBLIC HEALTH

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- 7248. Persons breaking quarantine to be returned.
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- 7250. Disposition of penalties and forfeitures.

ART. 19. CHAPTER NOT TO AFFECT POWERS UNDER SPECIAL LAWS.

- 7251. Powers of local boards not affected.

SUBCHAPTER I. ADMINISTRATION OF PUBLIC HEALTH LAW

ART. 1. STATE BOARD OF HEALTH

7048. Creation and members. The medical society of the state of North Carolina shall choose from its members by ballot four members, and the governor of the state shall appoint five other persons (one of whom shall be sanitary engineer), and they shall constitute the North Carolina board of health.

Rev., s. 4435; Code, s. 2875; 1879, c. 177, s. 1; 1885, c. 237, s. 1; 1893, c. 214, s. 1; 1911, c. 62, s. 1.

By the act of 1911, c. 62, the legislature adopted a new scheme for the protection of public health: Comrs. v. Henderson, 163-114.

7049. Term of office; vacancies; how filled. The members of the board of health elected by the state medical society shall be chosen to serve for six years. Their term of office shall begin immediately upon the expiration of the meeting at which they were elected. Those appointed by the governor shall serve for six

years, their term of office beginning with the first regular meeting of the board after their appointment. In case of death or resignation the board shall elect new members to fill the unexpired terms: Provided, the governor shall fill such vacancies as may occur where he has made appointments.

Rev., s. 4436; Code, s. 2877; 1879, c. 117, s. 3; 1885, c. 237, s. 3; 1893, c. 214, s. 2; 1901, c. 245; 1911, c. 62, s. 2.

7050. Duties of board. The board of health shall take cognizance of the health interests of the people of the state; shall make sanitary investigations and inquiries in respect to the people, employing experts when necessary; shall investigate the causes of diseases dangerous to the public health, especially epidemics, the sources of mortality, the effect of location, employments, and conditions upon the public health. They shall gather such information upon these matters for distribution among the people, with the especial purpose of informing them about preventable diseases. They shall be the medical advisers of the state, and are herein specially provided, and shall advise the government in regard to the location, sanitary construction, and management of all state institutions, and shall direct the attention of the state to such sanitary matters as in their judgment affect the industries, prosperity, health, and lives of the people of the state. They shall make an inspection once in each year, and at such other times as they may be requested to do so by the state board of charities, of all public institutions, including all convict camps under the control of the state's prison, and make a report as to their sanitary conditions, with suggestions and recommendations, to their respective boards of directors or trustees; and it shall be the duty of the officials in immediate charge of said institutions to furnish all facilities necessary for a thorough inspection. The secretary of the board shall make biennially to the general assembly, through the governor, a report of their work.

Rev., s. 4437; Code, s. 2876; 1879, c. 117, s. 2; 1885, c. 237, s. 2; 1893, c. 214, s. 3; 1911, c. 62, s. 3.

7051. May make regulations in epidemics. In times of epidemics of smallpox, yellow fever, typhoid fever, scarlet fever, diphtheria, typhus fever, bubonic plague, and cholera, the state board of health shall have sanitary jurisdiction in all cities and towns not having regularly organized local boards of health, and are hereby empowered to make all such regulations as they may deem necessary to protect the public health, and to enforce them by suitable penalties.

Rev., s. 4438; 1893, c. 214, s. 17; 1911, c. 62, s. 4.

The public safety is the highest law: *State v. Hay*, 126-999.

7052. To issue bulletins; to check diseases; compensation. Bulletins of the outbreak of disease dangerous to the public health shall be issued by the state board whenever necessary, and such advice freely disseminated to prevent and check the invasion of disease into any part of the state. It shall also be the duty of the board to inquire into any outbreak of disease, by personal visits or by any method the board shall direct. The compensation of members on such duty shall be four dollars a day and all necessary traveling and hotel expenses.

Rev., s. 4439; 1893, c. 214, s. 26; 1911, c. 62, s. 5.

7053. Officers of; salary of secretary; pay of members. The state board of health shall have a president, a secretary who shall also be treasurer, and an exec-

utive committee, said executive committee to have such powers and duties as may be assigned it by the board of health. The president shall be elected from the members of the board and shall serve six years; the secretary-treasurer shall be elected from the registered physicians of the state and shall serve six years. The executive committee shall be composed of the president of the board, ex officio, and two other members of the board to be elected from those composing it. The executive office of the board shall be in the city of Raleigh, and the secretary shall reside there. The secretary shall be the executive officer of the board and shall, under its direction, devote his entire time to public-health work, and shall be known as the "state health officer." He shall receive for his services such yearly compensation as shall be fixed by the board, not to exceed three thousand dollars and his actual traveling and hotel expenses when engaged in the work of the board. The board may in its discretion elect as a special assistant to the state health officer, for the antituberculosis work, the secretary of the state association for the prevention of tuberculosis, at an annual salary not to exceed six hundred dollars. The members of the board shall receive no pay, except that each member shall receive four dollars and necessary traveling and hotel expenses when on actual duty in attending the meetings of the board or of the executive committee or in pursuing special investigations in the state; but when attending important meetings beyond the limits of the state, the number of delegates thereto being limited to one in addition to the secretary, only actual traveling and hotel expenses shall be allowed. These sums shall be paid by the treasurer on authenticated requisition, approved and signed by the president.

Rev., s. 4440; Code, ss. 2878, 2881; 1879, c. 117, ss. 5, 7; 1885, c. 237, s. 4; 1893, c. 214, s. 4; 1911, c. 62, s. 6; 1913, c. 181, ss. 1, 2.

7054. Meetings to elect officers. The meeting of the state board of health for the election of officers shall be on the second day of the annual meeting of the medical society of the state of North Carolina in the year one thousand nine hundred and one and every six years thereafter.

Rev., s. 4441; 1901, c. 245, s. 4; 1911, c. 62, s. 7.

7055. Annual and special meetings. Special meetings of the state board of health may be called by the president through the secretary. The regular annual meeting shall be held at the same time and place as the state medical society, at which time the secretary shall submit his annual report. The executive committee shall meet at such times as the president of the board may deem necessary, and he shall call such meetings through the secretary.

Rev., s. 4442; 1893, c. 214, s. 27; 1911, c. 62, s. 8.

ART. 2. STATE LABORATORY OF HYGIENE

7056. Laboratory established under control of state board of health. For the better protection of the public health and to prevent the spread of communicable diseases there shall be established a state laboratory of hygiene, the same to be under the control and management of the state board of health.

Rev., s. 3057; 1905, c. 415; 1907, cc. 721, 884; 1911, c. 62, s. 36.

7057. To analyze potable waters. It shall be the duty of the state board of health to have made in such laboratory monthly examinations of samples from all

the public water supplies of the state; of all waters sold in bottle or other package, and of all spring waters that are maintained and treated as an adjunct to any hotel, park, or resort for the accommodation or entertainment of the public. In the case of springs in connection with hotels, parks, or resorts intermittently operated, examinations of the water shall be made monthly during the period only that they are open for the accommodation or entertainment of the public; but if upon the examination of the water of any such spring it shall be found to be infected or contaminated with intestinal bacilli or other impurities dangerous to health, examinations shall be made weekly until its purity and safety are shown.

The board shall also cause examinations to be made of well and spring waters, when in the opinion of any county superintendent of health or any registered physician there is reason to suspect such waters of being contaminated and dangerous to health.

Rev., s. 3057; 1905, c. 415; 1907, cc. 721, 884; 1911, c. 62, s. 36.

7058. To make examination for communicable diseases. The board shall likewise have made in this laboratory examinations of sputum in cases of suspected tuberculosis, of throat exudates in cases of suspected diphtheria, of blood in cases of suspected typhoid and malarial fever, of fæces in cases of suspected hookworm diseases, and such other examinations as the public health may require.

Rev., s. 3057; 1905, c. 415; 1907, cc. 721, 884; 1911, c. 62, s. 36.

7059. Support of laboratory; tax on waters. For the support of the state laboratory of hygiene in addition to the annual appropriation there is hereby appropriated an annual tax of sixty-four dollars, payable quarterly, by every water company, municipal, corporate, and private, selling water to the people. The annual tax for waters from springs or wells sold in bottles or otherwise shall be as follows: For springs or wells, the gross annual sales from which for the previous calendar year are less than two thousand dollars and more than one thousand five hundred dollars, fifty dollars; less than one thousand five hundred and more than one thousand dollars, forty dollars; less than one thousand and more than five hundred dollars, thirty dollars; less than five hundred and more than two hundred and fifty dollars, twenty dollars; less than two hundred and fifty dollars, fifteen dollars; for any spring maintained and treated as an adjunct to any hotel, park, or resort for the accommodation and entertainment of the public, fifteen dollars, and an additional tax for water sold in bottle or other package from such spring in accordance with the above schedule. The tax shall be collected quarterly by the sheriff, as other taxes, and shall be paid by the sheriff directly to the treasurer of the state board of health.

Rev., s. 3057; 1905, c. 415; 1907, cc. 721, 884; 1911, c. 62, s. 36.

7060. Duty of seller to make reports and transmit samples; penalties. Every corporation, firm, or person selling water in the manner set forth in the preceding section shall file with the treasurer of the state board of health, annually in the month of January, an affidavit as to the gross amount received from sales of water for the previous calendar year, and upon this affidavit the tax for the current year shall be based. Failure to file such affidavit within the time prescribed shall subject the corporation, firm, or person to double tax for the cur-

rent year. Failure to transmit sample within five days after receipt of sterilized bottle or container from the laboratory of hygiene shall be a misdemeanor, and upon conviction shall subject the delinquent to a fine of twenty-five dollars. Transportation charges, by mail, shall be paid by the sender; by express, by the laboratory. When deemed advisable, the laboratory of hygiene shall analyze samples purchased by it in the open market in lieu of those sent direct from the spring.

1911, c. 62, s. 36.

7061. Nonresidents selling water. Any person, firm, or corporation not a citizen of the state who shall sell or offer for sale any water in bottle or other package for consumption by the people of the state shall obtain a license from the treasurer of the state board of health and shall pay for said license the sum of sixty-four dollars per annum, or a less amount, equal to the tax paid by springs of the same class within the state, upon compliance with the conditions applying to them, payable in advance: Provided, that satisfactory evidence of purity furnished by the state hygienic laboratories of other states agreeing to reciprocate in the matter with this state shall be accepted in lieu of the license tax.

1911, c. 62, s. 36.

7062. Publication of dangerous waters. If water sold by any person, firm, corporation, or municipality shall be discovered by three successive analyses made by the state laboratory of hygiene to be dangerous to the public health, publication of that fact shall be made in the monthly bulletin of the state board of health. The result of said analyses shall be immediately forwarded by mail to the person, firm, corporation, or municipality selling the water so analyzed. When upon subsequent analysis the water shall be found to be no longer dangerous to health, a certificate thereof shall be furnished the person, firm, corporation, or municipality offering the water for sale, and publication of the fact shall be made in the monthly bulletin: Provided, that this shall not apply to therapeutic waters so medicated as to render them sterile, the question of their sterility to be decided by the director of the state laboratory of hygiene.

1911, c. 62, s. 36.

7063. Printing and stationery for laboratory. The printing and stationery necessary for the laboratory shall be furnished upon requisition upon the state printer, and paid for out of the appropriation to the state board of health.

1911, c. 62, s. 36; 1913, c. 181, s. 14; 1917, c. 220, s. 1; 1919, c. 145, s. 25.

ART. 3. COUNTY ORGANIZATION

7064. County board of health; organization; terms of members; chairman. The chairman of the board of county commissioners, the mayor of the county town, and in county towns where there is no mayor the clerk of the superior court, and the county superintendent of schools shall meet together on the first Monday in April, one thousand nine hundred and eleven, and thereafter on the first Monday of January in the odd years of the calendar, and elect from the regularly registered physicians of the county two physicians who, with themselves, shall constitute the county board of health. The chairman of the board of county commissioners shall be the chairman of the county board of health, and the

presence of three members at any regular or called meeting shall constitute a quorum. The term of office of members of the county board of health shall terminate on the first Monday in January in the odd years of the calendar, and while on duty they shall receive four dollars per diem to be paid by the county.

Rev., s. 4444; 1901, c. 245, s. 3; 1911, c. 62, s. 9. This section designating certain officials as a county board of health is constitutional: *McCullers v. Comrs.*, 158-75.

7065. Duties of county board of health; meetings; expenses. The county board of health shall have the immediate care and responsibility of the health interests of their county. They shall meet annually in the county town, and three members of the board are authorized to call a meeting of the board whenever in their opinion the public health interest of the county requires it. They shall make such rules and regulations, pay such fees and salary, and impose such penalties as in their judgment may be necessary to protect and advance the public health. All expenditures shall be approved by the board of county commissioners before being paid.

Rev., s. 4444; 1901, c. 245, s. 3; 1911, c. 62, s. 9.

It is the duty of the board of county commissioners to approve the salary of the county health officer before it is paid: *Halford v. Senter*, 169-546; *McCullers v. Comrs.*, 158-75.

7066. Violation of rules of county board a misdemeanor. If any person shall violate the rules and regulations made by the county board of health he shall be guilty of a misdemeanor, and fined not exceeding fifty dollars or imprisoned not exceeding thirty days.

Rev., s. 3453; 1901, c. 245, s. 3; 1911, c. 62, s. 10.

7067. To elect county physician or health officer. The board of health shall meet on the first Monday of July, one thousand nine hundred and thirteen, and thereafter on the second Monday of January in the odd years of the calendar, and elect either a county physician or a county health officer, whose tenure of service shall be terminable at the pleasure of the county board of health, and who shall serve thereafter until the second Monday in January of the odd years of the calendar. If the county board of health of any county shall fail to elect a county physician or county health officer within two calendar months of the time set in this section, the secretary of the state board of health shall appoint a registered physician, of good standing in the said county, to the office of county physician, who shall serve the remainder of the two years, and shall fix his compensation, to be paid by the said county, in proportion to the compensation paid by other counties for like service, having in view the amount of taxes collected by said county.

Rev., ss. 4444, 4446; 1897, c. 201, s. 1; 1901, c. 245, s. 3; 1911, c. 62, s. 9; 1913, c. 181, s. 1; 1915, cc. 214, 233.

It is the duty of the secretary of the state board of health to appoint a county physician, if the county board of health fails to elect: *McCullers v. Comrs.*, 158-75. The fees fixed for the services of the county physician must be approved by the board of county commissioners: *Ibid.*

As to county quarantine officer, see section 7070.

7068. Duties of county health officer; nonperformance a misdemeanor. The duties of the county health officer shall be to devote his entire time to the county

public-health work, and he shall perform the duties of county physician, the duties of quarantine officer, and the following additional duties: he shall make a sanitary examination during the summer months of every public school building and grounds in the county, and no school committee or teacher shall make use of any school building or grounds until the county superintendent of health shall certify in writing that said building and grounds have been inspected and found to be in a satisfactory sanitary condition within four months of the date of the certificate. He shall examine every school child that has previously been examined by the teacher according to methods furnished said teacher by the county superintendent of schools, and reported to said county superintendent of schools as probably defective in the condition of its eyes, ears, nose, or throat, and he shall further endeavor to have examined the feces of every child whom he suspects of having hookworm disease. He shall notify on blank forms and in accordance with instructions furnished by the state department of public instruction, every parent or guardian of a child having any defect of the aforesaid organs, or hookworm disease, and he shall suggest to said parent or guardian the proper course of treatment and urge that such treatment be procured. He shall coöperate fully with the county board of education, the county superintendent of schools, and the teachers in the public schools, to the end that children may be better informed in regard to the importance of health and the methods of preventing disease. He shall, through the county press, public addresses, and in every available way, endeavor to educate the people of his county to set a higher value on health, and to adopt such public and private measures as will tend to a greater conservation of life. Any violation of this section shall constitute a misdemeanor, and shall subject the defendant to a fine of not less than ten dollars nor more than fifty dollars.

1911, c. 62, s. 11; 1913, c. 181, s. 2.

7069. Duties of county physician; may employ another physician. The duties of the county physician shall be to make the medico-legal post-mortem examinations for the coroners' inquests, to make examination of lunatics for commitment, to render professional service to the sick inmates of the convict camp, jail, and county home, upon request of the superintendent or the keeper of these institutions, and to determine the nature of any particular disease, upon the request of the quarantine or deputy quarantine officer. The county physician shall have the right to employ any other regularly registered physician of his county, to perform any or all of the duties pertaining to the jail, county home, or convict camp, when in his judgment it is desirable to do so; but the terms under which such physician is employed by the county physician shall be approved by the board of county commissioners.

Rev., s. 4445; 1901, c. 245, s. 3; 1911, c. 62, s. 11; 1913, c. 181, s. 2.

NOTE.—For duties of county health officer or physician in respect to examining school children, see further, Education, Art. 45.

For right to receive pay for services rendered, under act of 1893, c. 214, s. 9, in caring for smallpox patient, see *Copple v. Comrs.*, 138-127.

7070. County quarantine officer. The election, term of office, and compensation of county quarantine officer are regulated as provided in article 9 of this chapter, entitled Infectious Diseases Generally. The county physician, county health offi-

cer, municipal physician, or municipal health officer shall be eligible to the position of quarantine officer. The county board of health shall arrange with the quarantine officer to accept and discharge the duties assigned in this chapter to him and any other duties relating to the control of infectious diseases which may be assigned to him by the county board of health.

The quarantine officer is charged with the enforcement of article 9 of this chapter, entitled Infectious Diseases Generally, and nothing herein contained shall interfere with the performance of his duties under that article. He shall faithfully enforce all laws pertaining to inland quarantine and disinfection and the rules and regulations governing these matters as prescribed by the local, county, or municipal boards of health, but any child or other person may remain in the custody and care of parents or family.

The quarantine of ports shall not be interfered with, but the officers of the local and state boards shall render all aid in their power to quarantine officers in the discharge of their duties.

The failure of the quarantine officer to perform the duties imposed in this section shall be a misdemeanor, and he shall be punished for each offense, except as otherwise specifically provided, by a fine of not less than ten dollars nor more than fifty dollars.

1911, c. 62, ss. 16, 20.

7071. Abatement of nuisances. Whenever and wherever a nuisance shall exist which in the opinion of the county physician or county health officer is dangerous to the public health, it shall be his duty to notify in writing the parties responsible for its continuance, of the character of the nuisance and the means of abating it. Upon this notification, the parties shall proceed to abate the nuisance: Provided, however, that if the party notified shall make oath or affirmation before a justice of the peace of his or her inability to carry out the directions of the county physician or county health officer, it shall be done at the expense of the town, city, or county in which the offender lives. In the latter case the limit of the expense chargeable to the city, town, or county shall not be more than one thousand dollars in any case: Provided further, that nothing in this section shall be construed to give the county physician or county health officer the power to destroy or injure property without a due process of law as now exists for the abatement of nuisances.

Rev., s. 4450; 1893, c. 214, s. 22; 1911, c. 62, s. 12; 1913, c. 181, s. 3.

Duty of officer to notify person responsible for dangerous nuisance: *State v. Wilkes*, 170-735. **The officers cannot burn a residence to prevent spread of contagious disease:** *Pritchard v. Comrs.*, 126-908.

7072. Failure to abate nuisance after notice misdemeanor. If any person, firm, corporation, or municipality responsible for the existence and continuance of a nuisance, after being duly notified in writing by the county physician or county health officer to abate said nuisance, shall fail to abate the same for twenty-four hours after such notice prescribed, he shall be guilty of a misdemeanor, and shall be fined two dollars a day as long as said nuisance remains.

Rev., s. 3446; 1893, c. 214, s. 22; 1911, c. 62, s. 13; 1913, c. 181, s. 3.

Evidence sufficient to convict under this section: *State v. Wilkes*, 170-735.

7073. Certain nuisances in seaport towns. All ponds of stagnant water, all cellars and foundations of houses, whose bottoms contain stagnant and putrid water; all dead and putrefied animals lying about the docks, streets, lanes, alleys, vacant lots, or yards; all privies that have no wells sunk under them; all slaughter-houses, all docks whose bottoms are alternately wet and dry by the ebbing and flowing of the tide, all accumulations of vegetable and animal substances undergoing putrefactive fermentation, in any of the seaport towns of the state, are declared common nuisances, productive of offensive vapors and noxious exhalations, the causes of disease, and ought to be restrained, regulated, and removed.

Rev., s. 4462; Code, s. 2907; R. C., c. 94, s. 15; 1815, c. 893, s. 1.

7074. Duty of owners of sunken lots in seaport towns; penalty. Every person possessed of a lot in any seaport town, which from its low or sunken situation is liable to retain tide or rain water, or on which cellars or foundations for buildings may be dug (whether a tenement be erected over the same or not), shall during the months of June, July, August, September, and October, preserve and keep the said lot, cellars, and foundations dry and free from stagnant or putrid water and other filth; and any person offending herein shall forfeit and pay five dollars for the use of the town for every week he shall suffer such stagnant or putrid water or other filth to remain therein. And if the said owner shall, notwithstanding the above provisions, neglect to remove such stagnant or putrid water or other filth, the commissioner of the town may employ any person, upon such terms as to them may seem reasonable and just, to remove such filth or stagnant or putrid waters; and the expense shall be considered as a further fine for not complying with this section, and shall be collected accordingly, and shall also be a lien upon the lot upon which the same has been expended.

Rev., s. 4461; Code, s. 2908; R. C., c. 94, s. 16; 1815, c. 893, s. 2.

7075. County commissioners may levy special tax to protect health. The board of county commissioners of each county is hereby authorized at any time to levy a special tax, to be expended under the direction of a committee composed of the chairman of the board of county commissioners and the county health officer or county physician for the preservation of the public health.

Rev., s. 4455.

ART. 4. MUNICIPAL ORGANIZATION

7076. Municipal physician or health officer; municipal regulations. The authorities of any city or town, not already authorized in its charter, are hereby authorized to elect a municipal physician or municipal health officer when in their judgment municipal health would be improved thereby, and to make such regulations, pay such fees and salaries, and impose such penalties as in their judgment may be necessary for the protection and the advancement of the public health.

Rev., s. 4454; 1893, c. 214, s. 25; 1911, c. 62, s. 14; 1913, c. 181, s. 4.

7077. Duties of the municipal physician or health officer; enforcement. The duties of the municipal physician within the jurisdiction of the town or city for which he is elected shall be identical with those of the county physician for the county, with the exception of the duties of the county physician pertaining

to the jail, convict camp, and county home. The authorities of any city or town shall have the power to assign the duties of quarantine officer to the municipal physician or health officer, and in such cases the municipal health officer shall faithfully perform the duties of the quarantine officer as prescribed in this chapter, and shall be subject to the penalties provided for the refusal or nonperformance of such duties. If the physician is employed to devote his entire time to the public health interests of his town or city, he shall be known as the municipal health officer, and shall discharge all duties pertaining to the public schools of his town or city which were assigned in this chapter to the county health officer, and such other duties as may be assigned him by the municipal board of health.

Any one violating any of the provisions of this section shall be guilty of a misdemeanor, and subject to a fine of not less than ten dollars nor more than fifty dollars.

Rev., s. 4509; 1893, c. 214, s. 9; 1911, c. 62, s. 15; 1913, c. 181, s. 5. Section referred to in *Comrs. v. Henderson*, 163-114.

ART. 5. SPECIAL-TAX SANITARY DISTRICT

7078. Question of special sanitary tax submitted; district formed. Special-tax sanitary districts may be formed by the county board of health in any county, without regard to township lines, under the following conditions: Upon a petition of a majority of the freeholders within the proposed special sanitary district, in whose names real estate in such district is listed in the tax lists of the current fiscal year, endorsed by the county board of health, the board of county commissioners, after thirty days notice at the courthouse door and three public places in the proposed district, shall hold an election to ascertain the will of the people within the proposed special sanitary district, whether there shall be levied in such district a special annual tax of not more than the amount specified in the petition on the one hundred dollars valuation of property and on the poll to conduct the health work of the district as is hereinafter provided, in case such special tax is voted. The board of county commissioners shall appoint a registrar and two pollholders, and shall designate a polling place and order a new registration for such district, and the election shall be held in the district under the law governing general elections, as near as may be, and the registrar and pollholders shall canvass the vote cast and declare the result, and shall duly certify the returns to the board of county commissioners, and the same shall be recorded in the records of said board of commissioners. The expense of holding said election shall be paid out of the general funds of the county. At such election those who are in favor of the levy and collection of the tax shall vote a ticket on which shall be printed or written the words "For Special Tax," and those who are opposed shall vote a ticket on which shall be printed or written the words "Against Special Tax." In case a majority of the qualified voters at the election is in favor of the tax, the same shall be annually levied and collected in the manner prescribed for the levy and collection of other taxes. All moneys levied under the provisions of this section shall, upon collection, be placed to the credit of the health committee or board in such district, which committee shall be appointed by the county board of health, and such health committee shall have the authority to carry on the health work in the district as hereinafter provided.

1913, c. 154, s. 1.

7079. Election as to enlarging district. Upon the written request of a majority of the health committee of any special-tax district, the county board of health may enlarge the boundaries of any special-tax district established under this article, so as to include any contiguous territory, and an election in such new territory may be ordered and held in the same manner as prescribed in this article for elections in special-tax districts; and in case a majority of the qualified voters in such new territory shall vote at such election in favor of a special tax of the same rate as that voted and levied in the special-tax district to which said territory is contiguous, then the new territory shall be added to and become a part of the said special-tax district; and in case a majority of the qualified voters shall vote against said tax, the district shall not be enlarged.

1913, c. 154, s. 1.

7080. Election to abolish or to restore district or increase tax. Upon petition of two-thirds of the qualified voters residing in any special-tax sanitary district established under this article, endorsed and approved by the county board of health, the board of county commissioners shall order another election in said district, to be held under the provisions prescribed in this article for holding other elections. If at such election the majority of the qualified voters in said district shall vote "Against Special Tax," said tax shall be deemed revoked and shall not be levied, and said district shall be discontinued. No election for revoking a special tax in any special-tax district shall be ordered and held in such district within less than two years from the date of the election at which the tax was voted and the district established, nor at any time within less than two years after the date of the last election on said question in said district; and no petition revoking such tax shall be approved by the county board of health oftener than once in two years. These provisions for ordering a new election to revoke a special tax in any special-tax district shall not apply to elections in such districts for increasing or restoring the special-tax levy in such district, which elections may be ordered and held at any time in accordance with the provisions of this article for establishing new special-tax districts.

1913, c. 154, s. 1.

7081. Sanitary committee; appointment; qualifications; pay. The county board of health of each county shall immediately after the formation of a special-tax sanitary district, and on the first Monday in July of the odd years of the calendar thereafter, appoint in each sanitary district three intelligent men of good business qualifications, who are known to be in favor of public education, who shall serve for two years from the date of their appointment as health or sanitary committee-men in their respective district and until their successors are elected and qualified. If a vacancy shall occur at any time, by death, resignation, or otherwise, it shall be the duty of the county board of health to fill such vacancy. Such board shall have the power to pay out of the special-tax fund to each member of the committee thus appointed one dollar per day for not more than six days per annum.

1913, c. 154, s. 2.

7082. Election of chairman and secretary; records kept. The sanitary committee, as soon as practicable after their election and qualification, not to exceed

twenty days, shall meet and elect from their number a chairman and secretary, and shall keep a record of their proceedings in a book to be kept for that purpose. The name and address of the chairman and secretary shall be reported to the county health officer and to the state health officer.

1913, c. 154, s. 3.

7083. Powers of committee; may make rules. The authority and duties of the special-tax sanitary committee shall be the same as those given by the public laws of the state to the county board of health in so far as they are applicable to the special-tax sanitary district. The committee shall have the immediate care and responsibility of the health interest of this district. They shall make such rules and regulations, pay such fees and salary, purchase supplies, and impose such penalties as in their judgment may be necessary to protect and advance the public health, but no rules or regulations they may promulgate shall conflict with the rules and regulations of the boards of health of the state and county of which the district is a part.

1913, c. 154, ss. 4, 5.

7084. Employment of health officer; disbursement of funds. The committee shall have authority to employ a registered physician of the state as health officer, and if he should persistently neglect the performance of his full duties for a period of ninety days he may be dismissed by the committee and his successor employed to fill the unexpired term. If the committee is satisfied that the provisions of this act have been complied with they shall give an order approved by the chairman and secretary of the committee on the treasurer of the county, payable to the health officer for the full monthly amounts due for services in accordance with the contract, but monthly statements of the work done by the health officer shall be made to the committee; and he shall supply reports promptly of such information as he can on blanks supplied by and returnable to the state board of health. Orders for all funds to the credit of the special-tax sanitary district before it shall be a valid voucher on the county treasurer must be first approved by the chairman and secretary of the committee for the sanitary district.

1913, c. 154, s. 4.

7085. Powers and duties of health officer. The duties and powers of the health officer elected for the special-tax sanitary district shall be the same as those prescribed by the public laws of the state for the county health officer, in so far as they are applicable to the sanitary district, and such additional duties as may be imposed on him by the special-tax sanitary committee.

1913, c. 154, s. 6.

SUBCHAPTER II. VITAL STATISTICS

ART. 6. REGISTRATION OF BIRTHS AND DEATHS

7086. State board of health to enforce regulations. The state board of health shall have charge of the registration of births and deaths, shall prepare the necessary instructions, forms, and blanks for obtaining and preserving such records, and shall procure the faithful registration of the same in each local registration

district as constituted in the second succeeding section, and in the central bureau of vital statistics at the capital of the state. The said board shall be charged with the uniform and thorough enforcement of the law throughout the state, and shall from time to time recommend to the general assembly any additional legislation that may be necessary for this purpose.

1913, c. 109, s. 1.

7087. State registrar. The secretary of the state board of health shall be state registrar of vital statistics, and shall have general supervision over the central bureau of vital statistics, which is hereby authorized to be established by said board. Adequate fireproof space in one of the state buildings for filing cases for the death and birth certificates made and returned under this article shall be provided by the committee on public buildings and grounds.

1913, c. 109, s. 2.

7088. Registration districts. For the purposes of this article the state shall be divided into registration districts as follows: Each city, each incorporated town, and each township shall constitute a local registration district.

1913, c. 109, s. 3.

7089. Appointment of local registrar. Within ninety days after the taking effect of this article, or as soon thereafter as possible, the chairman of every board of county commissioners in the state shall appoint a local registrar of vital statistics for each township in his county, and the mayor of every incorporated town or city in the state shall appoint a local registrar of vital statistics for his town or city, and the chairmen of the boards of county commissioners and the mayors of the cities or towns shall notify the state registrar, in writing, of the name and address of each local registrar so appointed. The term of office of each local registrar so appointed shall be four years, beginning with the first day of January of the year in which the local registrar is appointed, and until his successor has been appointed and has qualified, unless such office shall sooner become vacant by death, disqualification, operation of law, or other cause. In cities where health officers or other officials are, in the judgment of the state board of health, conducting effective registration of births and deaths under local ordinances at the time of the taking effect of this article, such officials may be appointed as registrars in and for such cities, and shall be subject to the rules and regulations of the state registrar, and to all the provisions of this article. Any vacancy occurring in the office of local registrar of vital statistics shall be filled for the unexpired term by a local registrar appointed by the same official who appointed the local registrar whose retirement creates the vacancy. Any chairman of a board of county commissioners or mayor of a city or town who appoints a local registrar to fill a vacancy in the office of local registrar shall notify the state registrar, in writing, of the name and address of the local registrar so appointed. At least ten days before the expiration of the term of office of any such local registrar, his successor shall be appointed by the chairman of the board of county commissioners for the township local registration office, and by the mayor of the city or town for the town or city registration office. Each local registrar shall be a bona fide resident of the township, city, or precinct for which he is appointed, and removal from the township, city, or precinct shall terminate the office.

1913, c. 109, s. 4; 1915, c. 20.

7090. Removal of local registrar. Any local registrar who, in the judgment of the secretary of the state board of health, fails or neglects to discharge efficiently the duties of his office as laid down in this article, or who fails to make prompt and complete returns of all births and deaths, as required thereby, shall be forthwith removed from his office by the secretary of the state board of health, and such other penalties may be imposed as are provided under section 7113.

1913, c. 109, s. 4.

7091. Appointment of deputy and sub-registrars. Each local registrar shall, immediately upon his acceptance of appointment as such, appoint a deputy, whose duty it shall be to act in his stead in case of absence, illness, or disability, and such deputy shall in writing accept such appointment, and be subject to all rules and regulations governing local registrars. And when it may appear necessary for the convenience of the people in any rural district, the local registrar is hereby authorized, with the approval of the state registrar, to appoint one or more suitable persons to act as sub-registrars, who shall be authorized to receive certificates and to issue burial or removal permits in and for such portions of the district as may be designated; and each sub-registrar shall note on each certificate, over his signature, the date of filing, and shall forward all certificates to the local registrar of the district within ten days, and in all cases before the third day of the following month: Provided, that each sub-registrar shall be subject to the supervision and control of the state registrar, and may be by him removed for neglect or failure to perform his duties in accordance with the provisions of this article or the rules and regulations of the state registrar, and he shall be subject to the same penalties for neglect of duties as the local registrar.

1913, c. 109, s. 4.

7092. Permit for burial or other disposition of body. The body of any person whose death occurs in this state, or which shall be found dead therein, shall not be interred, deposited in a vault or tomb, cremated or otherwise disposed of, or removed from or into any registration district, or be temporarily held pending further disposition more than seventy-two hours after death, unless a permit for a burial, removal, or other disposition thereof shall have been properly issued by the local registrar of the registration district in which the death occurred or the body was found. And no such burial or removal permit shall be issued by any registrar until a complete and satisfactory certificate of death has been filed with him as hereinafter provided: Provided, that when a dead body is transported into a registration district in North Carolina for burial, the transit and removal permit, issued in accordance with the law and health regulations of the place where the death occurred, shall be accepted by the local registrar of the district into which the body has been transported for burial or other disposition, as a basis upon which he may issue a local burial permit. He shall note upon the face of the burial permit the fact that it was a body shipped in for interment, and give the actual place of death; and no local registrar shall receive any fee for the issuance of burial or removal permits under this article other than the compensation provided in section 7111.

1913, c. 109, s. 5; 1915, c. 164, s. 1.

7093. Stillborn children to be registered. A stillborn child shall be registered as a birth and also as a death, and separate certificates of both birth and death shall be filed with the local registrar, in the usual form and manner, the certificate of birth to contain in place of the name of the child, the word "stillbirth"; but no certificate of birth nor certificate of death shall be required for a child that has not advanced to the fifth month of uterogestation. The medical certificate of the cause of death shall be signed by the attending physician, if any, and shall state the cause of death as "stillborn," with the cause of the stillbirth, if known, whether a premature birth, and, if born prematurely, the period of uterogestation, in months, if known; and a burial or removal permit of the prescribed form shall be required. Midwives shall not sign certificates of death for stillborn children; but such cases, and stillbirths occurring without attendance of either physician or midwife, shall be treated as deaths without medical attendance, as provided for in this article.

1913, c. 109, s. 6.

7094. Contents of death certificates. The certificate of death shall contain the following items, which are hereby declared necessary for the legal, social, and sanitary purposes subserved by registration records:

1. Place of death, including state, county, township, or town, village or city. If in a city, the ward, street, and house number; if in a hospital or other institution, the name of the same to be given instead of the street and house number. If in an industrial camp, the name of the camp to be given.

2. Full name of decedent. If an unnamed child, the surname preceded by "Unnamed."

3. Sex.

4. Color or race—as white, black, mulatto (or other negro descent), Indian, Chinese, Japanese, or other.

5. Conjugal condition—as single, married, widowed, or divorced.

6. Educational attainments—as illiterate, able to read and write, common school education or equivalent, high school education or equivalent, college education or equivalent. If the deceased is less than fifteen years of age the educational attainments of the mother, if living, or of the father, if living, or of the guardian, in the order named, shall be given.

7. Date of birth, including the year, month, and day.

8. Age, in years, months, and days. If less than one day, the hours or minutes. If exact information is unobtainable, give approximate age.

9. Occupation. The occupation to be reported of any person who had any remunerative employment, stating (a) trade, profession, or particular kind of work; (b) general nature of industry, business, or establishment in which employed (or employer).

10. Birthplace; at least state or foreign country, if known.

11. Name of father.

12. Birthplace of father; at least state or foreign country, if known.

13. Maiden name of mother.

14. Birthplace of mother; at least state or foreign country, if known.

15. Signature and address of informant.

16. Official signature of registrar, with the date when certificate was filed, and registered number.

17. Date of death—year, month, and day.

18. Certification as to medical attendance on decedent, fact and time of death, time last seen alive, and the cause of death, with contributory secondary cause or complication, if any, and duration of each, and whether attributed to dangerous or insanitary conditions of employment; signature, date of signature, and address of physician or official making the medical certificate.

19. Length of residence (for inmates of hospitals and other institutions; transients or recent residents) at place of death and in the state, together with the place where disease was contracted, if not at place of death, and former or usual residence.

20. Place of burial or removal; date of burial.

21. Signature and address of undertaker or person acting as such.

The personal and statistical particulars (items one to thirteen) shall be authenticated by the signature of the informant, who may be any competent person acquainted with the facts.

The statement of facts relating to the disposition of the body shall be signed by the undertaker or person acting as such.

The medical certificate shall be made and signed by the physician, if any, who last treated the deceased for the disease or injury which caused death, and such physician shall specify the time in attendance, the time he last saw the deceased alive, and the hour of the day at which death occurred, and he shall further state the cause of death, so as to show the course of disease or sequence of causes resulting in the death, giving first the name of the disease causing death (primary cause), and the contributory (secondary) cause, if any, and the duration of each. Indefinite and unsatisfactory terms, denoting only symptoms of disease or conditions resulting from disease, will not be held sufficient for the issuance of a burial or removal permit; and any certificate containing any such indefinite or unsatisfactory terms, as defined by the state registrar, shall be returned to the physician or person making the medical certificate for correction and more definite statement. Causes of death, which may be the result of either disease or violence, shall be carefully defined; and if from violence, the means of injury shall be stated, and whether (probably) accidental, suicidal, or homicidal. In deaths in hospitals, institutions, or of nonresidents, the physician shall supply the information required under subsection 18 above, if he is able to do so, and may state where, in his opinion, the disease was contracted.

1913, c. 109, s. 7.

7095. Death without medical attendance; duty of undertaker and officials. In case of death occurring without medical attendance, it shall be the duty of the undertaker or person acting as such to notify the local registrar of such death, and when so notified the registrar shall, prior to the issuance of the permit, inform the local health officer and refer the case to him for immediate investigation and certification. When the local health officer is not a qualified physician, or when the death takes place in a township registration district, or where there is no such official, and in such cases only, the registrar is authorized to make the certificate and return from the statement of relatives or other persons having adequate knowledge of the facts. If the registrar has reason to believe that the death had

been due to unlawful act or neglect, he shall refer the case to the coroner or other proper officer for investigation and certification, who shall make the certificate of death required for a burial permit, stating therein the name of the disease causing death; or, if from external causes, (1) the means of death, and (2) whether (probably) accidental, suicidal, or homicidal; and shall, in any case, furnish such information as may be required by the state registrar in order properly to classify the death.

1913, c. 109, s. 8.

7096. Undertaker to file death certificate and obtain permit. The undertaker or person acting as undertaker shall file the certificate of death with the local registrar of the district in which the death occurred, and obtain a burial or removal permit, prior to any disposition of the body. He shall obtain the required personal and statistical particulars from the person best qualified to supply them, over the signature and address of his informant, and shall present the certificate to the attending physician, if any, or to the health officer or coroner, as directed by the local registrar, for the medical certificate of the cause of death and other particulars necessary to complete the record, as specified in sections 7094 and 7095. He shall then state the facts required relative to the date and place of burial, over his signature and with his address, and present the completed certificate to the local registrar in order to obtain a permit for burial, removal, or other disposition of the body. He shall deliver the burial permit to the person in charge of the place of burial, before interring or otherwise disposing of the body; or shall attach the removal permit to the box containing the corpse, when shipped by any transportation company, this permit to accompany the corpse to its destination, where, if within the state, it shall be delivered to the person in charge of the place of burial.

1913, c. 109, s. 9.

7097. Sales of caskets regulated. Every person, firm, or corporation selling a casket shall keep a record showing the name of the purchaser, purchaser's post-office address, name of deceased, date of death, and place of death of deceased, which record shall be open to inspection of the state registrar or his agent at all times. On the first day of each month the person, firm, or corporation selling caskets shall report to the state registrar each sale for the preceding month, on a blank provided for that purpose. But no person, firm, or corporation selling caskets to dealers or undertakers only shall be required to keep such record, nor shall such report be required from undertakers when they have direct charge of the disposition of a dead body. Every person, firm, or corporation selling a casket at retail, and not having charge of the disposition of the body, shall enclose within the casket a notice furnished by the state registrar, calling attention to the requirements of the law, a blank certificate of death, and the rules and regulations of the state board of health concerning the burial or other disposition of a dead body.

1913, c. 109, s. 9.

7098. Permit for burial in state. If the interment, or other disposition of the body is to be made within the state, the wording of the burial or removal permit may be limited to a statement by the registrar, over his signature, that a satis-

factory certificate of death having been filed with him, as required by law, permission is granted to inter, remove, or dispose otherwise of the body, stating the name, age, sex, cause of death, and other necessary details upon the form prescribed by the state registrar.

1913, c. 109, s. 10.

7099. Interment without permit forbidden. No person in charge of any premises in which interments are made shall inter or permit the interment or other disposition of any body unless it is accompanied by a burial, removal, or transit permit, as herein provided. Such person shall endorse upon the permit the date of interment, over his signature, and shall return all permits so endorsed to the local registrar of his district within ten days from the date of interment. He shall also keep a record of all bodies interred or otherwise disposed of on the premises under his charge, in each case stating the name of each deceased person, place of death, date of burial or disposal, and name and address of the undertaker; which record shall at all times be open to official inspection. When burying a body in a cemetery or burial ground having no person in charge, the undertaker, or person acting as such, shall sign the burial or removal permit, giving the date of burial, and shall write across the face of the permit the words "No person in charge," and file the burial or removal permit within ten days with the registrar of the district in which the cemetery is located.

1913, c. 109, s. 11.

7100. Registration of births. The birth of every child born in this state shall be registered as hereinafter provided.

1913, c. 109, s. 12.

7101. Birth certificate to be filed within five days. Within five days after the date of each birth there shall be filed with the local registrar of the district in which the birth occurred a certificate of such birth, which certificate shall be upon the form adopted by the state board of health with a view of procuring a full and accurate report with respect to each item of information enumerated in the following section. Where a physician, midwife, or person acting as midwife, was in attendance upon the birth, it shall be the duty of such person to file the required certificate. Where there was no physician, midwife, or person acting as midwife, in attendance upon the birth, it shall be the duty of the father or mother of the child, the householder or owner of the premises where the birth occurred, or the manager or superintendent of the public or private institution where the birth occurred, each in the order named, within five days after the date of the birth, to report the fact to the local registrar. In such case and in case the physician, midwife, or person acting as midwife, in attendance is unable, by diligent inquiry, to obtain any of the items specified in the following section, it is the duty of the local registrar to secure from the person reporting the birth, or from any other person who knows the facts, information to enable him to prepare the required certificate of birth, and it is the duty of the person questioned to answer correctly to the best of his knowledge all such questions, and to verify his statement by his signature, when requested to do so by the local registrar.

1913, c. 109, s. 13; 1915, c. 85, s. 1.

7102. Contents of birth certificate. The certificate of birth shall contain the following items, which are hereby declared necessary for the legal, social, and sanitary purposes subserved by registration records:

1. Place of birth, including state, county, township or town, village or city. If in a city, the ward, street, and house number; if in a hospital or other institution, the name of the same to be given, instead of the street and house number.

2. Full name of child. If the child dies without a name before the certificate is filed, enter the surname preceded by "Unnamed." If the living child has not yet been named at the date of filing certificate of birth, the space for "full name of child" is to be left blank, to be filled out subsequently by a supplemental report, as hereinafter provided.

3. Sex of child.

4. Whether a twin, triplet, or other plural birth. A separate certificate shall be required for each child in case of plural births.

5. For plural births, number of each child in order of birth.

6. Legitimate or illegitimate: Provided, that in illegitimate births the word "illegitimate" shall be written across the face of the certificate and all items on the certificate which would in any way reveal the identity of the father, mother, or illegitimate child itself shall be omitted.

7. Date of birth, including the year, month, and day.

8. Full name of father: Provided, that if the child is illegitimate, the name of the putative father shall not be entered without his consent, but the other particulars relating to the putative father (items nine to thirteen) may be entered if known, otherwise as "Unknown."

9. Residence of father.

10. Color or race of father.

11. Educational attainments—illiterate, able to read and write, common school education or equivalent, high school education or equivalent, college education or equivalent.

12. Age of father at last birthday, in years.

13. Birthplace of father; at least state or foreign country, if known.

14. Occupation of father. The occupation to be reported if engaged in any remunerative employment, with the statement of (a) trade, profession, or particular kind of work; (b) general nature of industry, business, or establishment in which employed (or employer).

15. Maiden name of mother.

16. Residence of mother.

17. Color or race of mother.

18. Educational attainments—illiterate, able to read and write, common school education or equivalent, high school education or equivalent, college education or equivalent.

19. Age of mother at last birthday, in years.

20. Birthplace of mother; at least state or foreign country, if known.

21. Occupation of mother. The occupation to be reported if engaged in any remunerative employment, with the statement of (a) trade, profession, or particular kind of work; (b) general nature of industry, business, or establishment in which employed (or employer).

22. Number of children born to this mother, including present birth.

23. Number of children of this mother living.

24. The certification of attending physician or midwife as to attendance at birth, including statement of year, month, day (as given in item seven), and hour of birth, and whether the child was born alive or stillborn. This certification shall be signed by the attending physician or midwife, with date of signature and address; if there is no physician or midwife in attendance, then by the father or mother of the child, householder, owner of the premises, or manager or superintendent of public or private institution where the birth occurred, or other competent person, each in the order named, whose duty it shall be to notify the local registrar of such birth, as required by section 7101.

25. Exact date of filing in office of local registrar, attested by his official signature, and registered number of birth, as hereinafter provided.

1913, c. 109, s. 14.

7103. Blank furnished for report of name. When any certificate of birth of a living child is presented without the statement of the given name, then the local registrar shall make out and deliver to the parents of the child a special blank for the supplemental report of the given name of the child, which shall be filled out as directed, and returned to the local registrar as soon as the child shall have been named.

1913, c. 109, s. 15.

7104. Institutions to keep records of inmates. All superintendents or managers, or other persons in charge of hospitals, almshouses, lying-in or other institutions, public or private, to which persons resort for treatment of diseases, confinement, or are committed by process of law, shall make a record of all the personal and statistical particulars relative to the inmates in their institutions at the date of approval of this article, which are required in the forms of the certificates provided for by this article, as directed by the state registrar; and thereafter such record shall be, by them, made for all future inmates at the time of their admittance. In case of persons admitted or committed for treatment of disease, the physician in charge shall specify for entry in the record the nature of the disease, and where, in his opinion, it was contracted. The personal particulars and information required by this section shall be obtained from the individual himself if it is practicable to do so; and when they cannot be so obtained, they shall be obtained in as complete a manner as possible from relatives, friends, or other persons acquainted with the facts.

1913, c. 109, s. 16.

7105. State registrar to supply blanks; to perfect and preserve birth certificate. The state registrar shall prepare, have printed, and supply to all registrars all blanks and forms used in registering, recording, and preserving the returns, or in otherwise carrying out the purposes of this article; and shall prepare and issue such detailed instructions as may be required to procure the uniform observance of its provisions and the maintenance of a perfect system of registration; and no other blanks shall be used than those supplied by the state registrar. He shall carefully examine the certificates received monthly from the local registrars, and if any such are incomplete or unsatisfactory he shall require such further infor-

mation to be supplied as may be necessary to make the record complete and satisfactory. And all physicians, midwives, informants, or undertakers, and all other persons having knowledge of the facts, are hereby required to supply, upon a form provided by the state registrar or upon the original certificate, such information as they may possess regarding any birth or death upon demand of the state registrar, in person, by mail, or through the local registrar. No certificate of birth or death, after its acceptance for registration by the local registrar, and no other record made in pursuance of this article, shall be altered or changed in any respect otherwise than by amendments properly dated, signed, and witnessed. The state registrar shall further arrange, bind, and permanently preserve the certificates in a systematic manner, and shall prepare and maintain a comprehensive and continuous card index of all births and deaths registered, such index to be arranged alphabetically, in the case of deaths, by the names of decedents, and in the case of births, by the names of fathers and mothers.

1913, c. 109, s. 17.

7106. To inform registrars as to dangerous diseases. He shall inform all registrars what diseases are to be considered infectious, contagious, or communicable and dangerous to the public health, as decided by the state board of health, in order that when deaths occur from such diseases proper precautions may be taken to prevent their spread.

1913, c. 109, s. 17.

7107. Birth certificate as evidence. At the expiration of five years after the ratification of this article, certified copies of birth registration certificates shall be accepted by public school authorities in this state as *prima facie* evidence of age of children registering for school attendance, and no other proof shall be required. At the expiration of fourteen years from the passage of this article certified copies of birth registration certificates shall be required by all factory inspectors, and employers of youthful labor, as *prima facie* proof of age, and no other proof shall be required from children born in this state or states which for fourteen years previous to the date of such certificate have had registration laws essentially identical with this article. When, however, it is not possible to secure such certified copy of birth registration certificate for any child, the school authorities and factory inspectors may accept as secondary proof of age any competent evidence by which the age of persons is usually established.

1913, c. 109, s. 17.

7108. Church and other records filed and indexed; fees for transcript. If any cemetery company or association, or any church or historical society or association, or any other company, society, or association, or any individual, is in possession of any record of births or deaths which may be of value in establishing the genealogy of any resident of this state, such company, society, association, or individual may file such record or a duly authenticated transcript thereof with the state registrar, and it shall be the duty of the state registrar to preserve such record or transcript and to make a record and index thereof in such form as to facilitate the finding of any information contained therein. Such record and index shall be open to inspection by the public, subject to such reasonable conditions as the state registrar may prescribe. If any person desires a transcript of any

record filed in accordance herewith, the state registrar shall furnish the same upon application, together with a certificate that it is a true copy of such record, as filed in his office, and for his services in so furnishing such transcript and certificate he shall be entitled to a fee of (fifty cents per hour or fraction of an hour necessarily consumed in making such transcript) and to a fee of fifty cents for the certificate, which fees shall be paid by the applicant.

1913, c. 109, s. 17.

7109. Duties of local registrar as to certificates; reports. Each local registrar shall supply blank forms of certificates to such persons as require them. Each local registrar shall carefully examine each certificate of birth or death when presented for record in order to ascertain whether or not it has been made out in accordance with the provisions of this article and the instructions of the state registrar; and if any certificate of death is incomplete or unsatisfactory, it shall be his duty to call attention to the defects in the return, and to withhold the burial or removal permit until such defects are corrected. All certificates, either of birth or of death, shall be written legibly, in durable black ink, and no certificate shall be held to be complete and correct that does not supply all of the items of information called for therein, or satisfactorily account for their omission. If the certificate of death is properly executed and complete, he shall then issue a burial or removal permit to the undertaker: Provided, that in case the death occurred from some disease which is held by the state board of health to be infectious, contagious, or communicable and dangerous to the public health, no permit for the removal or other disposition of the body shall be issued by the registrar, except under such conditions as may be prescribed by the state board of health. If a certificate of birth is incomplete, the local registrar shall immediately notify the informant, and require him to supply the missing items of information if they can be obtained. He shall number consecutively the certificates of birth and death, in two separate series, beginning with number one for the first birth and the first death in each calendar year, and sign his name as registrar in attest of the date of filing in his office. He shall also make a complete and accurate copy of each birth and each death certificate registered by him in a record book supplied by the state registrar, which record book the local registrar shall deposit with the register of deeds of the county not later than the fifteenth of January each year. And the register of deeds shall make and keep an index, the form of which shall be of the births and deaths that have occurred in the county, and these records shall be open at all times to official inspection. And he shall, on the fifth day of each month, transmit to the state registrar all original certificates registered by him for the preceding month. And if no births or no deaths occurred in any month the local registrar shall, on the fifth day of the following month, report that fact to the state registrar, on a card provided for such purpose.

1913, c. 109, s. 18; 1915, c. 85, s. 2; 1915, c. 164, s. 2.

7110. Pay of local registrars. Each local registrar shall be paid the sum of twenty-five cents for each birth certificate and each death certificate properly and completely made out and registered with him, correctly recorded and promptly returned by him to the state registrar, as required by this article. And in case no births or deaths were registered during any month, the local registrar

shall be entitled to be paid the sum of twenty-five cents for each report to that effect, but only if such report be made promptly as required by this article. The compensation of local registrars for services required of them by this article shall be paid by the county treasurers for registration work outside of incorporated municipalities, and by the town or city treasurer for registration work in incorporated municipalities. The state registrar shall certify every six months to the treasurers of the several counties and incorporated municipalities the number of births and deaths properly registered, with the names of the local registrars and the amounts due each at the rates fixed herein.

1913, c. 109, s. 19; Ex. sess. 1913, c. 15, s. 1; 1915, c. 85, s. 3; 1919, c. 210, s. 1.

7111. Certified copy of records; fee. The state registrar shall, upon request, supply to any applicant a certified copy of the record of any birth or death registered under provisions of this article, for the making and certification of which he shall be entitled to a fee of fifty cents, to be paid by the applicant. The United States census bureau may, however, obtain, without expense to the state, transcripts or certified copies of births and deaths without payment of the fees herein prescribed, and for transcripts so furnished the state registrar may receive from the census bureau such compensation for this service, not exceeding two cents for each certificate, as the state board of health may approve. Any copy of the record of a birth or death, properly certified by the state registrar, shall be prima facie evidence in all courts and places of the facts therein stated. For any search of the files and records when no certified copy is made, the state registrar shall be entitled to a fee of fifty cents for each hour or fractional part of an hour of time of search, said fee to be paid by the applicant. And the state registrar shall keep a true and correct account of all fees by him received under these provisions, and turn the same over to the treasurer of the state board of health.

1913, c. 109, s. 20; Ex. sess. 1913, c. 15, s. 2; 1919, c. 145, s. 25.

7112. Violations of article; penalty. Any person, who for himself or as an officer, agent, or employee of any other person, or of any corporation or partnership, shall do or omit any of the following acts:

1. Inter, cremate, or otherwise finally dispose of the dead body of a human being, or permit the same to be done, or shall remove said body from the primary registration district in which the death occurred or the body was found, without the authority of a burial or removal permit issued by the local registrar of the district in which the death occurred or in which the body was found;

2. Refuse or fail to furnish correctly any information in his possession, or shall furnish false information affecting any certificate or record, required by this article;

3. Wilfully alter, otherwise than as provided by section 7105, or shall falsify any certificate of birth or death, or any record established by this article;

4. Being required by this article to fill out a certificate of birth or death and file the same with the local registrar, or deliver it, upon request, to any person charged with the duty of filing the same, shall fail, neglect or refuse to perform such duty in the manner required;

5. Being a state registrar, a chairman of a board of county commissioners, a mayor of a city or town, a local registrar, a deputy registrar, or sub-registrar,

shall fail, neglect, or refuse to perform his duty as required by this article and by the instructions and direction of the state registrar thereunder, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall for the first offense be fined not less than five dollars nor more than fifty dollars, and for each subsequent offense not less than ten dollars nor more than fifty dollars, or be imprisoned in the county jail not more than thirty days.

1913, c. 109, s. 21; 1919, c. 210, s. 2.

7113. Duties of registrars and others in enforcing this article. Each local registrar is hereby charged with the strict and thorough enforcement of the provisions of this article in his registration district, under the supervision and direction of the state registrar. He shall make an immediate report to the state registrar of any violation of this article coming to his knowledge, by observation or upon complaint of any person or otherwise.

The state registrar is hereby charged with the thorough and efficient execution of the provisions of this article in every part of the state, and is hereby granted supervisory power over local registrars, deputy local registrars, and sub-registrars, to the end that all of its requirements shall be uniformly complied with. The state registrar, either personally or through an accredited representative, shall have authority to investigate cases of irregularity or violation of this article, and all registrars shall aid him, upon request, in such investigations. When he shall deem it necessary, he shall report cases of violation of the provisions of this article to the prosecuting attorney of the county, or the solicitor of the district, with a statement of the facts and circumstances; and when any such case is reported to him by the state registrar, the prosecuting attorney or solicitor of the district, as the case may be, shall forthwith initiate and promptly follow up the necessary court proceedings against the person or corporation responsible for the alleged violation of law. Upon request of the state registrar, the attorney-general shall likewise assist in the enforcement of the provisions of this article.

1913, c. 109, s. 22.

7114. Appropriations. For the purposes of the thorough execution of this article the sum of ten thousand dollars, or as much thereof as may be necessary, is hereby annually appropriated to be paid by the state auditor on requisition signed by the president and secretary of the state board of health.

1913, c. 109, s. 23; 1915, c. 62.

7115. Local systems abrogated. No systems for the registration of births and deaths shall be continued or maintained in any of the several municipalities of this state other than the one provided for and established by this article.

1913, c. 109, s. 24.

SUBCHAPTER III. SANITATION AND PROTECTION OF PUBLIC

ART. 7. WATER PROTECTION

7116. Persons supplying water to protect its purity. In the interest of the public health, every person, company, or municipal corporation or agency thereof selling water to the public for drinking and household purposes shall take every reasonable precaution to protect from contamination and assure the healthful-

ness of such water, and any provisions in any charters heretofore granted to such persons, companies, or municipal corporations in conflict with the provisions of this article are hereby repealed.

Rev., s. 3058; 1899, c. 670, s. 1; 1903, c. 159, s. 1; 1911, c. 62, s. 24.

7117. Board of health to control and examine waters; rules; penalties. The state board of health shall have the general oversight and care of all inland waters, and shall from time to time, as it may deem advisable, cause examinations of said waters and their sources and surroundings to be made for the purpose of ascertaining whether the same are adapted for use as water supplies for drinking and other domestic purposes, or are in a condition likely to impair the interests of the public or of persons lawfully using the same, or to imperil the public health. For the purpose aforesaid, it may employ such expert assistants as may be necessary. The said board shall make such reasonable rules and regulations as in its judgment may be necessary to prevent contamination and to secure other purifications as may be required to safeguard the public health. Any individual, firm, corporation, or municipality, or person responsible for the management of water supply, failing to comply with said rules and regulations, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, at the discretion of the court.

1911, c. 62, s. 24.

7118. Systems of water supply and sewerage; plans submitted; penalties. The state board of health shall from time to time consult with and advise the boards of all state institutions, the authorities of cities and towns, corporations, or firms already having or intending to introduce systems of water supply, drainage or sewerage, as to the most appropriate source of supply, the best practical method of assuring the purity thereof, or of disposing of their drainage or sewage, having regard to the present and prospective needs and interests of other cities, towns, corporations, or firms which may be affected thereby. All such boards of directors, authorities, corporations, and firms are hereby required to give notice to said board of their intentions in the premises and to submit for its advice outlines of their proposed plans or schemes in relation to water supplies and disposal of sewage, and no contract shall be entered into by any state institution or town for the introduction of a system of water supply or sewage disposal until said advice shall have been received, considered, and approved by the said board. For the purpose of carrying out the general provisions of this and the preceding sections, every municipal or private corporation, company, or individual supplying or authorized to supply water for drinking or other domestic purposes to the public shall file with the secretary of the state board of health, within ninety days after the receipt of notice from said secretary, certified plans and surveys, in duplicate, pertaining to the source from which the water is derived, the possible source of infections thereof, and the means in use for the purification thereof, in accordance with the directions to be furnished by the said secretary. Failure on the part of any individual, firm, corporation, or municipality to comply with this section shall be a misdemeanor, and upon conviction those responsible therefor shall be fined not less than fifty dollars nor more than one hundred dollars, at the discretion of the court.

1911, c. 62, s. 24.

7119. Condemnation of lands for water supply. All municipalities operating water systems and sewer systems, and all water companies operating under charter from the state or license from municipalities, which may maintain public water supplies, may acquire by condemnation such lands and rights in lands and water as are necessary for the successful operation and protection of their plants, said proceedings to be the same as prescribed by law under the chapter Eminent Domain.

Rev., s. 3060; 1903, c. 159, s. 16; 1905, c. 287, s. 2; c. 544; 1911, c. 62, s. 25.

NOTE.—For power of state institutions to condemn land for water supplies and to enter on lands to lay and repair water pipes, see State Departments, Institutions and Commissions, ss. 7522, 7523.

7120. Compensation for land. If damages shall be claimed for the use of such lands, and the parties cannot agree as to the amount of compensation to be paid, they may proceed in the manner now provided by law under the chapter Eminent Domain.

1911, c. 62, s. 27.

7121. Inspection of watersheds. The state board of health shall have quarterly sanitary inspections made of the entire watershed of any waterworks that derives its water from a surface supply, except in those cases where the supply is taken from large creeks or rivers that have a minimum daily flow of ten million gallons, in which case the inspection shall apply to the fifteen miles of watershed above the waterworks intake. Whenever in the opinion of the board of health of the city or town to which the water is supplied, or, where there is no such local board of health, in the opinion of the county board of health, or county physician or county health officer, or in the opinion of the state board of health, there is special reason to apprehend the infection of the water from any particular locality by the germs of typhoid fever or cholera, then the state board of health shall cause to be made at least once in every week a sanitary inspection of that particular locality. The inspection of the entire watershed as herein provided for shall include a particular examination of the premises of every inhabited house on the watershed, and, in passing from house to house, a general inspection for dead bodies of animals or accumulations of filth. It is not intended that the term "entire watershed" shall include uninhabited fields and wooded tracts that are free from suspicion. The sanitary inspector shall give in person to the head of each household on the watershed, or, in his absence, to some member of the household, the necessary directions for the proper sanitary care of his premises, and shall deliver to each family residing on the watershed such literature on pertinent sanitary subjects as may be supplied him by the municipal health officer or by the secretary of the state board of health. Full report in duplicate of all such inspections shall be made promptly by the sanitary inspector to the secretary of the state board of health, and their accuracy certified to by the affidavit of the inspector.

The authorities of any town or city that makes use of a public surface water supply or the officers of a public surface water supply company may make such additional inspections as such officials may deem necessary.

Rev., ss. 3045, 3046; 1899, c. 670; 1903, c. 159, s. 2; 1911, c. 62, s. 28; 1919, c. 71, s. 14.

NOTE.—See section 7142.

7122. Inspectors may enter premises. Each sanitary inspector is authorized and empowered to enter upon any premises and into any building upon his respective watershed for the purpose of making the inspections required.

Rev., s. 3050; 1899, c. 670, s. 8; 1903, c. 159, s. 10; 1911, c. 62, s. 30.

7123. Control of residents on watersheds. Every person residing or owning property on the watershed of a lake, pond, or stream from which a drinking supply is obtained shall carry out such reasonable instructions as may be furnished him in the matter hereinbefore set forth directly by the municipal health officer or by the state board of health. Any one refusing or neglecting to comply with the requirements of this section shall be guilty of a misdemeanor and fined not less than ten nor more than fifty dollars, or imprisoned for not less than ten nor more than thirty days.

Rev., ss. 3049, 3859; 1903, c. 159, s. 7; 1911, c. 62, s. 31.

7124. Defiling water supply misdemeanor. If any person shall defile, corrupt, or make impure any well, spring, drain, branch, brook, creek, or other source of public water supply by collecting and depositing human excreta on the watershed, or depositing or allowing to remain the body of a dead animal on the watershed, or in any other manner, and if any person shall destroy or injure any pipe, conductor of water, or other property pertaining to an aqueduct, or shall aid and abet therein, he shall be guilty of a misdemeanor.

Rev., ss. 3457, 3857; Code, s. 1114; R. C., c. 34, s. 97; 1893, c. 214; 1850, c. 104; 1903, c. 159, s. 12; 1911, c. 62, s. 32.

NOTE.—Damage to water supply of public institutions is a misdemeanor, see State Departments, Institutions and Commissions, sec. 7526.

7125. Discharge of sewage into water supply prohibited. No person, firm, corporation, or municipality shall flow or discharge sewage above the intake into any drain, brook, creek, or river from which a public drinking-water supply is taken, unless the same shall have been passed through some well-known system of sewage purification approved by the state board of health; and the continued flow and discharge of such sewage may be enjoined upon application of any person.

If any person, firm, or corporation, or officer of any municipality having a sewerage system in charge shall violate the provisions of this section he shall be guilty of a misdemeanor.

Rev., ss. 3051, 3858; 1903, c. 159, s. 13; 1911, c. 62, ss. 33, 34.

This section is constitutional: Board of Health v. Comrs., 173-250; Durham v. Cotton Mills, 141-615—and is not limited to watershed of 15 miles as specified in section 7121, Ibid. It may extend 75 miles above the intake for water supply: Board of Health v. Comrs., 173-250. No prescriptive right can be acquired by long usage to violate this section: Ibid.

An action to enjoin a town from emptying sewage into a stream may be maintained by the state board of health, or by the secretary of the board in his individual name: Board of Health v. Comrs., 173-250. No arbitrary or fixed method of treating sewage is required, but the parties should confer with the state board of health as to most reasonable requirements: Ibid.

7126. Cemeteries on watersheds forbidden. No burying ground or cemetery shall be established on the watershed of any public water supply nearer than five hundred yards of the source of supply, nor in violation of the rules and regulations of the state board of health as authorized by this article.

Rev., s. 3053; 1903, c. 159, s. 15.

7127. Water supply of communities without sewerage systems. All schools, hamlets, villages, towns, or industrial settlements which are now located or may be hereafter located on the shed of any public water supply not provided with a sewerage system shall provide and maintain a reasonable system approved by the state board of health for collecting and disposing of all accumulations of human excrement within their respective jurisdiction or control. Any one refusing or neglecting to comply with the requirements of this section shall be guilty of a misdemeanor and fined not less than ten dollars nor more than fifty dollars, or imprisoned for not less than ten nor more than thirty days.

Rev., ss. 3052, 3860; 1903, c. 159, s. 14; 1907, c. 585; 1911, c. 62, s. 35.

7128. Damage to private water supply misdemeanor. If any person shall wilfully put into the well, spring, or cistern of water of any other person any substance or thing whereby such well, spring, or cistern may be endamaged, or the water thereof be made less wholesome or fit for use, he shall be guilty of a misdemeanor.

Rev., s. 3456; Code, s. 1114; R. C., c. 34, s. 97; 1850, c. 104.

ART. 8. PRIVIES

7129. Privy defined. The term "privy" as used in this article shall be understood to include any and all buildings which are not connected with a system of sewerage, or with septic tanks of such construction and maintenance as approved by the state board of health and which are used for affording privacy in acts of urination or defecation.

1919, c. 71, s. 1.

7130. Sewerage, septic tank or approved privy required, when. No person shall maintain or use a residence, located within three hundred yards of another residence, that is not provided with sewerage, or with septic tanks approved by the state board of health, or with a sanitary privy which complies in construction and maintenance with the requirements of this article.

1919, c. 71, s. 2.

7131. License form to be fastened on certain privies. The state board of health, through its officers and inspectors, shall fasten a license form on all privies within three hundred yards of the residence of any person other than that of the owner or tenant thereof during the last three calendar months of every year, when, on inspection, the said privy is approved by the officer making the inspection as constructed in a sanitary manner and to be in good repair, in accordance with reasonable rules and regulations to be prescribed by the state board of health for the sanitary construction and maintenance of privies. The license shall apply to the calendar year following its issuance, except as hereinafter provided.

1919, c. 71, s. 3.

7132. Certain privies to be maintained in accordance with regulations. Every privy located within three hundred yards of the residence of any person other than that of the owner or tenant thereof shall be maintained in a sanitary manner and in accordance with reasonable rules and regulations to be prescribed by the state board of health and posted in suitable form inside of the privy by an officer of the said board.

1919, c. 71, s. 4.

7133. Responsibility for sanitary maintenance of privy. The head of a family or household, the proprietor of a boarding-house, hotel, restaurant, or store, the principal or superintendent of a school, the agent or station-master of a railroad station or depot, or the person in charge of an office building, establishment, or institution, shall be responsible for the sanitary maintenance, as prescribed in section 7132, of such privy or privies as may be used by his or her household, guests, customers, pupils, passengers, occupants, employees, workers or other persons.

1919, c. 71, s. 5.

7134. Supervision of privies by board of health. The state board of health, through its officers and inspectors, shall exercise such supervision over the sanitary construction and maintenance of privies as may be necessary to enforce the provisions of this article.

1919, c. 71, s. 6.

7135. Use of insanitary privies prohibited. If an officer or an inspector of the state board of health shall find a privy located within three hundred yards of the residence of a person other than that of the owner or tenant thereof which is not constructed in accordance with the provisions of section 7131 of this article, he shall securely fasten on the said privy a notice reading, "Insanitary; unlawful to use"; and if the inspector or officer of the board shall find, in the course of his inspection, a privy not being maintained in a sanitary manner and in accordance with the reasonable rules and regulations of the state board of health for the maintenance of privies, he shall remove the license from the privy and securely fasten on the privy a notice, reading, "Insanitary; unlawful to use."

1919, c. 71, s. 7.

7136. Privy license not to be removed or defaced. No person shall remove or deface a privy license or other official notice fastened on or in a privy by an officer of the state board of health.

1919, c. 71, s. 8.

7137. Violation of this article. Any person who violates any of the provisions of this article, and any person who is responsible for the sanitary maintenance of a privy, and who permits such privy after an official notice reading, "Insanitary; unlawful to use," has been fastened on it, to be used, shall be guilty of a misdemeanor and fined not less than five dollars nor more than fifty dollars or imprisoned not exceeding thirty days.

1919, c. 71, s. 9.

7138. Privy license fees. The owner of each privy shall pay to the officer or inspector of the state board of health, at the time the privy is inspected and approved for license, a license fee of forty cents, for which the said officer or inspector shall issue a receipt; and the said officer or inspector shall pay to the treasurer of the state board of health, and account for, all fees so received. The officers and employees of the state board of health authorized to receive license fees for the inspection and licensing of privies shall, before beginning their work, be bound by a bond sufficient to insure the state against the loss of funds which may come into their hands under the provisions of this article.

1919, c. 71, s. 10.

7139. Bureau of sanitary engineering and inspection; duties. For the faithful execution of this article, the state board of health shall organize and maintain a bureau of sanitary engineering and inspection which shall (1) study, ascertain, and recommend for installation suitable types of privies for the variety of geologic, sociologic, and economic conditions found in the state of North Carolina; (2) exercise such oversight over the construction and maintenance of privies coming within the meaning of this article as may be necessary for the protection of public health; (3) organize, supervise, and direct a force of sanitary inspectors who shall (a) inspect, license, and close privies in accordance with the provisions of this article and the rules and regulations of the state board of health, as provided for in this article; (b) make such other sanitary inspections as are required of the state board of health by law; (c) assist in the enforcement of the public health laws of the state, more especially the vital statistics law and the quarantine law; (d) collect samples of water from public water supplies for analyses by the state laboratory of hygiene when such analyses are deemed necessary by the state board of health.

1919, c. 71, s. 11.

7140. Powers of board of health and inspectors; penalty for interference. The members of the executive staff of the state board of health, and such additional state sanitary inspectors as shall be appointed for the enforcement of this article, are hereby authorized and are empowered to enter upon any premises and into any buildings or institutions for the purposes of inspection as provided for or required by state laws or regulations of the state board of health pursuant to such laws, but the privacy of no person shall be violated. Any person or persons who wilfully interfere with or obstruct the officers of the state board of health in the discharge of any of the aforementioned duties shall be guilty of a misdemeanor and subject to a fine of not less than one hundred dollars nor more than one thousand dollars, or imprisonment at the discretion of the court.

1919, c. 71, s. 12.

7141. Provisions of this article applicable to all privies on watersheds. That the provisions of this article shall apply to all residences, institutions, and establishments, and all privies without regard to their distance from the homes of persons other than that of the owners or tenants thereof, which are located on the watershed of a public surface water supply. For the purpose of this article, the term "watershed" shall include the entire watershed of all streams, creeks, and

rivers that have a daily average flow of less than ten million gallons, but for watersheds of streams, creeks or rivers that have a daily average flow of more than ten million gallons, the watershed shall include only such drainage areas as lie within fifteen miles of the waterworks intake.

1919, c. 71, s. 13.

7142. Water companies using surface supply relieved of inspections. The officers of public water companies using surface supplies are hereby relieved after October first, one thousand nine hundred and nineteen, of making the inspections and reports of sanitary conditions obtaining on watersheds as required heretofore by law, and the state board of health shall assume and discharge these duties: Provided, that nothing in this article shall prevent the authorities of any town or city that makes use of a public surface water supply, or the officers of the public surface water supply company, to make such additional inspections as such officials may deem necessary.

1919, c. 71, s. 14.

NOTE.—See section 7121.

7143. Funds from licenses used for enforcement of this article. The funds received by the treasurer of the state board of health under the provisions of this article shall be expended in the enforcement of its provisions, and if there is a surplus over that which is necessary for the enforcement of this article, it shall be paid to the treasurer of the state, to be expended as provided by law. All funds received and disbursed under the provisions of this article shall be accurately accounted for in the biennial report of the state board of health.

1919, c. 71, s. 15.

7144. Exceptions to provisions of this article. This article shall not apply to any city the population of which shall be in excess of twenty thousand according to the latest official estimates of the bureau of the census, if the authorities of such city, before October first, one thousand nine hundred and nineteen, shall officially request the state board of health to exempt it from its provisions. This article shall not apply to the residences of farmers and the homes of their tenants that are located more than three hundred yards from residences that come within the meaning of this article.

1919, c. 71, s. 16.

ART. 9. INFECTIOUS DISEASES GENERALLY

7145. County quarantine officers enforce article; oath. On the second Tuesday of July, one thousand nine hundred and seventeen, all county quarantine officers and all county health officers to whom the duties of county quarantine officer have been assigned, as provided in this chapter, shall appear before the clerk of the superior court in their respective counties and make official oath or affirmation to faithfully enforce the provisions of this article. In those counties where a county board of health fails or neglects to elect a county quarantine officer on or before the second Tuesday of July, one thousand nine hundred and seventeen, the secretary of the North Carolina state board of health shall appoint a quarantine officer for the county. On refusal or neglect of any quarantine officer, or county health officer acting as quarantine officer to make, within a period of ten

days of the time named in this section, the aforesaid official oath or affirmation, the secretary of the North Carolina state board of health is hereby empowered to remove such quarantine or county health officer and to appoint a quarantine officer to enforce the provisions of this article, and on the appointee are conferred all the powers, privileges, and compensation herein provided for the county quarantine officer.

1917, c. 263, s. 1.

7146. Quarantine officers; election; term; vacancies. The official term of service of a county quarantine officer, including those in office and serving on June first, one thousand nine hundred and seventeen, except in those counties where there is a county health officer, shall expire on the first Monday in January of the fourth year from the year of their appointment or election. In those counties having a county health officer who makes official oath or affirmation to enforce this article, the office of county quarantine officer shall be coterminous with the office of the said county health officer. The county board of health shall elect a successor to the county quarantine officer, or the county health officer acting as county quarantine officer, on or before the expiration of the term of service of said officer as herein defined. If the county quarantine officer, or the county health officer acting as such, is disqualified to continue in office by resignation, death, or otherwise, the county board of health shall, within five days thereafter, elect a county health officer or county quarantine officer to fill out the unexpired term. If the county board of health fails so to elect a successor to complete the unexpired term, the secretary of the North Carolina state board of health shall immediately appoint a county quarantine officer who shall make official oath or affirmation to enforce this article.

1917, c. 263, s. 2.

NOTE.—For further provisions as to the quarantine officer, see this chapter, sec. 7070.

7147. Election notified to state board of health; officer to qualify. The county board of health on electing a county quarantine officer shall promptly notify, in writing, the secretary of the North Carolina state board of health of such action, and failure to do so shall nullify the election. The officer-elect shall promptly notify the secretary of the North Carolina state board of health, in writing, of his having taken the oath or affirmation of office, inclosing a certified copy thereof, and failure to do so shall be construed as failure to have taken such official oath or affirmation.

1917, c. 263, s. 3.

7148. Failure of officer to enforce article; penalty. Any county quarantine officer, or county health officer acting as county quarantine officer, who fails or refuses to enforce this article in his county shall be guilty of a misdemeanor, and, on conviction, fined not exceeding fifty dollars, and may, if the secretary of the North Carolina state board of health so decide, be disqualified for continuance in office.

1917, c. 263, s. 4.

7149. Municipalities; how far included. This article shall not apply to incorporated towns and cities of the state having a population, according to the last

decennial census, of ten thousand or over; nor shall it apply to those counties the sanitary administration of which is directed by a joint board of health presiding over both the county and a town or city having a population, according to the last federal decennial census, of ten thousand or more; but the system of quarantine in force in such cities and counties shall be approved by the North Carolina state board of health, and reports of the occurrence of contagious diseases therein shall be made to the North Carolina state board of health as from all other cities and counties in the state.

1917, c. 263, s. 5.

7150. Compensation of quarantine officers. For his services the county quarantine officer shall be paid monthly, on certification from the secretary of the North Carolina state board of health that he has performed the duties of his office in a satisfactory manner, out of the county funds by the county treasurer, or in those counties that have no county treasurer by that official who performs the usual duties of the treasurer's office. Monthly payments shall be made on a population basis, according to the last decennial federal census, as follows:

	<i>Per month.</i>
Counties with a population less than 10,000.....	\$ 15.00
Counties with a population of from 10,000 to 15,000.....	17.50
Counties with a population of from 15,000 to 25,000.....	25.00
Counties with a population of from 25,000 to 40,000.....	35.00
Counties with a population of from 40,000 to 50,000.....	45.00
Counties with a population over 50,000.....	50.00

In addition to such monthly salary, the county treasurer, or the person acting as county treasurer, shall pay to the quarantine officer all financial statements with receipted bills attached for sums paid out for postage, registration of letters, and disinfectants, the total sum not to exceed ten dollars in any month nor one hundred dollars in any one year. The secretary of the North Carolina state board of health shall supply the county quarantine officer, without cost to the county, with all forms, placards, and literature necessary for carrying out the provisions of this article. County authorities may revise their understandings with those county physicians who are acting as both physicians to county charges and as quarantine officers, and whose terms of office as quarantine officer shall expire in January, one thousand nine hundred and twenty-one, unless discontinued by death, resignation, or other disqualification, on a basis of compensation adequate to the new duties herein required; but in no case shall the compensation allowed for the services required of quarantine officers be less than that herein named.

1917, c. 263, s. 6.

7151. Physicians to report infectious diseases. It shall be the duty of every physician to notify the county quarantine officer of the name, address, including the name of the school district, of any person living or residing, permanently or temporarily, in the county about whom such physician is consulted professionally and whom he has reason to suspect of being afflicted with whooping-cough, measles, diphtheria, scarlet fever, smallpox, infantile paralysis, typhoid fever, typhus fever, Asiatic cholera, bubonic plague, yellow fever, or other disease

declared by the North Carolina state board of health to be infectious or contagious, within twenty-four hours after obtaining reasonable evidence for believing that such person is so afflicted. If the afflicted person is a minor, the physician consulted professionally about him shall notify the county quarantine officer of the name and address of the parent or guardian of the minor in addition to the name, address, and school district of the minor himself.

Rev., s. 3448; 1893, c. 214, s. 11; 1917, c. 263, s. 7.

7152. Parents and householders to report. It shall be the duty of every parent, guardian, or householder, in the order named, to notify the county quarantine officer of the name, address, including the name of the school district, of any person in their family or household about whom no physician has been consulted but whom they have reason to suspect of being afflicted with whooping-cough, measles, diphtheria, scarlet fever, smallpox, infantile paralysis, typhoid fever, Asiatic cholera, typhus fever, bubonic plague, yellow fever, or other disease declared by the North Carolina state board of health to be infectious or contagious.

1917, c. 263, s. 8.

7153. Quarantine officers to report cases to state board of health. It shall be the duty of the county quarantine officer to report all cases of whooping-cough, measles, diphtheria, scarlet fever, smallpox, infantile paralysis, typhoid fever, Asiatic cholera, typhus fever, bubonic plague, yellow fever, or other disease declared by the North Carolina state board of health to be infectious or contagious, reported to him by physicians and parents, guardians, or householders, within twenty-four hours of the receipt of such report to the secretary of the North Carolina state board of health at Raleigh, and to make this report on forms supplied him by the secretary and in accordance with the rules and regulations adopted by the North Carolina state board of health.

1917, c. 263, s. 9.

7154. Rules of state board of health; rules of local authorities. The North Carolina state board of health shall adopt what in their judgment seems to be the necessary rules and regulations governing the management, supervision, or control of the diseases coming within the meaning of this article, and shall cause the rules and regulations adopted to be published in the North Carolina state board of health bulletin and to be supplied in suitable quantities to all concerned with the execution of this article, and the North Carolina state board of health shall revise such rules and regulations from time to time to adjust their requirements to new discoveries and improved methods for dealing with the sources and modes of infection of the diseases specified. The rules and regulations so adopted shall be regarded as the minimum requirements, and the authorities of any county, town, or city may adopt such additional rules and regulations for the control of the diseases mentioned in this article, and pay such additional fees and salaries as in their judgment seem necessary.

1917, c. 263, s. 10.

7155. Violation of article or rules misdemeanor. Any person wilfully violating any of the provisions of this article and any person violating any of the rules and regulations adopted by the North Carolina state board of health, as provided

in the preceding section, shall, in the absence of specific provisions in other sections of this article, be guilty of a misdemeanor and fined not exceeding fifty dollars, or imprisoned not more than thirty days, at the discretion of the court. In case the offender be stricken with the disease for which he is quarantinable, he shall be subject to the penalty on recovery, unless in the opinion of the secretary of the North Carolina state board of health the penalty should be omitted.

Rev., s. 3448; 1893, c. 214, s. 11; 1917, c. 263, s. 11.

7156. Bureau of epidemiology; appropriations. For the purpose of seeing that this article and the rules and regulations adopted by the North Carolina state board of health, as provided in this article, are faithfully executed, a bureau of epidemiology and the office of state epidemiologist is hereby created, and an appropriation of four thousand dollars for the fiscal year of one thousand nine hundred and seventeen, and thereafter an annual appropriation of six thousand dollars is hereby appropriated. The aforesaid bureau and the state epidemiologist shall be under the control and supervision of the North Carolina state board of health.

1917, c. 263, s. 12.

7157. Contingent fund in case of pestilence. A contingent fund of five thousand dollars is appropriated, subject to the auditor's warrant, upon the recommendation of the governor, to be expended in pursuance of the provisions of this chapter, when rendered necessary by the visitation of cholera or any other pestilential disease.

1911, c. 62, s. 39.

7158. Disposal of bowel discharges in typhoid and cholera; penalties. Any householder in whose family there is to his knowledge a person sick of cholera or typhoid fever, who shall permit the bowel discharges of such sick person to be emptied without first having disinfected them according to instructions to be obtained from the attending physician or county superintendent of health, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than two nor more than twenty-five dollars, or imprisoned not less than ten nor more than thirty days. In cases where such undisinfected discharges are emptied on the watershed of any stream or pond furnishing the source of water supply for any public institution, city, or town, the penalty shall be a fine of not less than twenty-five dollars nor more than fifty dollars, or imprisonment for not more than thirty days. And any physician attending a case of cholera or typhoid fever who refuses or neglects to give the proper instructions for such disinfection as soon as the diagnosis is made shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars nor more than fifty dollars.

During an epidemic of cholera all common carriers shall so arrange their water-closets as to catch in water-tight receptacles the dejections of all persons using the same, and shall disinfect the said dejections in a manner satisfactory to the state board of health before emptying them.

Rev., s. 4459; 1893, c. 214, s. 16; 1909, c. 793, s. 8.

7159. Travel of infected persons regulated; inspectors; penalty. The county or municipal boards of health in counties, cities, or towns near to or bordering upon either of the neighboring states, may appoint, by writing, suitable persons to attend at places by which travelers may pass from infected places in other states, who may examine such travelers as may be suspected of bringing any infection dangerous to the public health, and, if need be, may restrain them from traveling until licensed thereto by the quarantine officer or by the proper municipal health authorities of the city or town to which they may come. A traveler coming from such infected place who, without such license, travels within this state, except to return by the most direct route to the state whence he came, after he has been cautioned to depart by the persons so appointed, shall be isolated or ejected, at the discretion of the quarantine officer or of the municipal health authorities last mentioned. And all common carriers bringing into this state any such persons as named above are hereby required to return them to some point without this state, if required by the quarantine officer or municipal health authorities above specified; and upon refusal to comply with the regulations of such boards of health or municipal health authorities upon this subject, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five nor more than fifty dollars, or imprisoned not more than thirty days. Nothing in this section shall prevent the state board of health in time of epidemics from appointing such additional examiners as they may deem necessary to the preservation of the public health.

Rev., ss. 3454, 4506; 1893, c. 214, s. 15; 1901, c. 245, s. 6.

Compare *Levin v. Burlington*, 129-184.

7160. Quarantine of infected travelers. When a person comes to a city or town from abroad or from some other place in this state which is infected or has lately been infected with either of the diseases specified in this article or other disease declared by the North Carolina state board of health to be infectious or contagious, the quarantine officer or lawful municipal authority specified in this article shall make effective provision in the manner deemed best for the safety of the inhabitants by removing such person to a separate house or otherwise, and by providing nurses and other assistance and necessaries, which shall be at the charge of the person himself or his parents, where able, otherwise at the charge of the city, town, or county to which he belongs.

Rev., s. 4507; 1893, c. 214, s. 14; 1901, c. 245, s. 5.

7161. Transportation of bodies of persons dying of infectious diseases. No railroad corporation or other common carrier or persons shall convey or cause to be conveyed through or from any city, town, or county in this state the remains of any person who has died of smallpox, measles, scarlet fever, diphtheria, typhus fever, yellow fever, or cholera until such body has been disinfected and encased in such manner as shall be directed by the state board of health, so as to preclude any danger of communicating the disease to others by its transportation; and no local registrar, clerk, or health officer or any other person shall give a permit for the removal of such body until he has received from the local board of health or other proper health authorities of the city, town, or county where the death occurred a certificate stating the cause of death and that the said body has been

prepared in the manner set forth in this section; which certificate shall be delivered in duplicate to the agent or person who receives the body, and one copy shall be pasted on the box containing the corpse; said certificate shall be furnished in blank by the transportation company when no local board of health exists.

Rev., s. 4459; 1893, c. 214, s. 16.

ART. 10. SMALLPOX

7162. Notification of occurrence required; vaccination of school children. On the appearance of a case of smallpox in any neighborhood, town, or city, the quarantine officer shall use all due diligence to warn the public of its existence and to notify the public of the proper means for preventing its spread; the said warning and notification to be according to the instructions of the state health officer. The board of health of any town, city, or county shall have authority to require children attending the public schools to present certificate of immunity from smallpox either through recent vaccination or previous attack of the disease. If any parent, guardian, school committee, principal, or teacher shall permit a child to violate such a requirement of the aforesaid authorities, he or she shall be guilty of a misdemeanor, and fined not less than ten dollars nor more than fifty dollars.

1911, c. 62, s. 23; 1913, c. 181, s. 11.

Vaccination may be required for children attending public school: *Hutchins v. Durham*, 137-68. Regulations providing for vaccination of public school children are valid: *Morgan v. Stewart*, 144-424.

7163. Free vaccination. On the appearance of a case of smallpox in any neighborhood due warning of the existence of the disease shall be given, and all persons not able to pay shall be vaccinated free of charge by the county physician or health officer or by the municipal physician or health officer, and the county physician or health officer shall vaccinate every person admitted into a public institution, jail, or county home as soon as practicable, unless he is satisfied, upon examination, that the person is already successfully vaccinated; the money for vaccine to be furnished by the county commissioners.

Rev., s. 4451; 1913, c. 181, s. 12.

Rules, regulations or orders made hereunder, when reasonable and relevant to the purpose, are a valid exercise of authority: *Morgan v. Stewart*, 144-424.

Empowering authorities of county and town to make regulations and provisions for vaccination of inhabitants, and to enforce them by penalties, is a valid exercise of governmental police power for public welfare, health and safety: *State v. Hay*, 126-999—for the public safety is the highest law, *Ibid*.

If there are exceptional cases where, owing to the peculiar state of the health or system, vaccination would be dangerous, that would be matter of defense, the burden of which would be on the defendant, and a fact to be found by the jury: *State v. Hay*, 126-999.

A city is not liable to one arrested on the ground of having been exposed to smallpox, where the officers act without malice: *Levin v. Burlington*, 129-184.

7164. Rules as to vaccination; violations punished. The board of health of any city, town, or county may make such regulations and provisions for the vaccination of the inhabitants of their city, town, or county, and impose such penalties

as they may deem necessary to protect the public health, and the violations of such rules shall be a misdemeanor, punishable by fine not exceeding fifty dollars or imprisonment not exceeding thirty days.

Rev., s. 3455; 1913, c. 181, s. 12.

Section constitutional: State v. Hay, 126-999. Burden of proof on defendant to show matter in excuse, where prima facie case made out, Ibid. That defendant bona fide believed it was dangerous to be vaccinated, or believed that his former vaccination would protect him, or that his physician expressed an opinion, is no defense hereunder: Ibid. The opinion of the physician supervising vaccination would be presumed to be correct: Ibid.

ART. 11. DIPHTHERIA

7165. Antitoxin furnished to indigents. The state board of health is hereby authorized and directed to arrange for a sufficient supply of diphtheria antitoxin for the treatment therewith, free of charge, of indigent persons sick of diphtheria, and for immunizing against infection such indigent persons as may be exposed to the disease, and to extend the facilities for making the diagnosis of the disease.

1909, c. 389, s. 1.

7166. Laboratory of hygiene to furnish antitoxin to counties. The board of health shall keep on hand in the state laboratory of hygiene a supply of reliable diphtheria antitoxin, and shall distribute it, through the said laboratory, to the several counties of the state, whenever the boards of county commissioners thereof shall request it, and shall notify the secretary of the state board of health that they will pay for the same upon presentation of a bill, and shall designate the person or persons with whom it shall be deposited. The antitoxin shall be furnished at the lowest figure obtainable for a reliable preparation.

1909, c. 389, s. 2.

7167. Physician's requisitions for antitoxin. Whenever a physician is called to a case of diphtheria in an indigent person or one in immediate need and unable to pay for antitoxin, he may obtain the same from one of the depositories or diphtheria stations by filling out and signing in duplicate the blank requisition form to be supplied with the antitoxin by the said board of health, and presenting the same to the county superintendent of health or any member of the county sanitary committee, or to such person as the said county sanitary committee may appoint, who, after satisfying himself as to the indigency of the person or persons for whom the antitoxin is intended, shall approve and countersign in duplicate the requisition. The person dispensing the antitoxin shall retain one copy of the requisition and shall mail the duplicate promptly to the director of the laboratory of hygiene. He shall also return to the said director all packages of antitoxin in his possession as soon as they become out of date.

1909, c. 389, s. 3.

7168. Article applicable to cities and towns. The provisions of this article shall apply to cities and towns upon the same conditions as it does to counties.

1909, c. 389, s. 4.

7169. Use of certain state lands for preparation of sera. The state laboratory of hygiene, under direction of the state board of health, shall have the use and

control of so much of a tract of land owned by the state and more particularly referred to in the chapter Agriculture, section 4880, as may be deemed necessary for the manufacture of diphtheria antitoxin and other curative sera. The president of the state board of health and the state veterinarian shall amicably allot the portion of said land to be used by the state board of health and by the state board of agriculture in their respective operations.

1913, c. 161, s. 2.

ART. 12. HYDROPHOBIA

7170. Board of health to provide treatment. The state board of health is hereby authorized and empowered to provide for and have conducted under its direction the preventive treatment of hydrophobia or rabies, whenever in its judgment circumstances, financial and other, will justify it. To meet the expenses of this treatment the said board is hereby given authority to supplement the revenue derived from the fees for the treatment by such sums from the treasury of the state laboratory of hygiene as may be necessary: Provided, that the usefulness and efficiency of the said laboratory is not thereby impaired.

1907, c. 891, s. 1.

7171. Treatment to be without charge. The benefits of said treatment shall be given free of charge to all residents of the state who shall present to the secretary of the state board of health or its representative having in charge the management of this special work, an affidavit of inability to pay, duly sworn to and subscribed before a justice of the peace, or, if the case be a minor, such an affidavit by the parent or guardian. To meet as far as may be the expenses of this special work the said state board of health is hereby authorized and directed to demand from those able to do so the payment in advance of a reasonable fee, not to exceed in any case the usual charge made by the reputable Pasteur institutes of this country.

1907, c. 891, s. 2.

ART. 13. TUBERCULOSIS

7172. Members of board of health directors of state sanatorium for tuberculosis. The board of directors managing and controlling the body politic and corporate existing under the name and style of "North Carolina Sanatorium for the Treatment of Tuberculosis" is hereby dissolved, and in lieu thereof the members of the state board of health shall be and are hereby declared to be ex officio the directors of said corporation as heretofore created and established by law.

1907, c. 964; Ex. sess. 1913, c. 40, s. 1.

Change in organization and effect upon extension work explained in *Sanatorium v. State Treas.*, 173-810.

7173. Powers of directors; election of officers. The North Carolina sanatorium for the treatment of tuberculosis is hereby empowered and authorized to elect and employ such officials and to pay such fees and salaries (provided the appropriation is not exceeded) as the directors shall find necessary for the proper management and maintenance of the institution; the directors shall determine the qualifications for admission of those applying as patients to the institution; the directors shall make all such by-laws and regulations for the govern-

ment of the said institution as shall be necessary, among which shall be such as shall make the institution as nearly self-supporting as shall be consistent with the purpose of its creation; and the directors shall do such other things as seem reasonably necessary and incident to the proper management and maintenance of the institution.

1907, c. 964; Ex. sess. 1913, c. 40, s. 2.

7174. Bureau for tuberculosis; register of tuberculous persons. The directors shall equip, operate, and maintain a bureau for tuberculosis, located in their offices in Raleigh, to which bureau the reports of cases of tuberculosis, as hereinafter provided, shall be made; and the bureau of tuberculosis shall keep a register of all persons in this state known to be afflicted with tuberculosis. The bureau shall have exclusive control of such register and shall not permit the inspection thereof, nor disclose any of its personal particulars, except to representatives of municipal or county governments, the state government, or organizations, orders, churches, or corporations interested in and contemplating making financial provision in the institution for the care and treatment of afflicted citizens or members of their respective organizations, orders, churches, or corporations.

Ex. sess. 1913, c. 40, s. 3.

7175. Bureau to maintain correspondence school. The bureau of tuberculosis shall develop and maintain a correspondence school with those of the state's tuberculous population, to the end that the tuberculous population of this state shall be properly advised and directed both as to methods for obtaining cures and as to methods for preventing the spread of the disease to other persons.

Ex. sess. 1913, c. 40, s. 4.

7176. Cases of tuberculosis reported to bureau. All physicians and the executive officers of every private or public hospital, institution for the treatment of disease, or dispensary shall report, on blank forms and in accordance with the instructions of the bureau of tuberculosis, the names and other particulars of all persons afflicted with tuberculosis whom they are called upon to examine or treat or who are to be examined or treated in the hospital, institution, or dispensary of which he or she is the executive head, within seven days after the disease is recognized by such physician or executive officer. Any violation of this section shall be a misdemeanor and subject to a fine of not less than ten dollars nor more than one hundred dollars, and the judge, in addition to imposing the said fine, may, upon the evidence produced in the trial or upon such further evidence as may be produced before him, find and cause to be entered upon the records of the court that the physician deliberately and falsely diagnosed the disease, tuberculosis, as some other disease in order to avoid the requirements of this section, and the North Carolina board of medical examiners upon such record shall revoke the license of such physician. Nothing in this section shall abrogate the rights and powers of municipalities and counties to require the reporting of cases of tuberculosis by physicians to the local authorities; but municipalities and counties may, when desired, in lieu of such reports by physicians, call upon the bureau of tuberculosis for notification of cases of tuberculosis reported to the bureau from the municipality or county.

Ex. sess. 1913, c. 40, s. 5.

7177. Directors may receive gifts for sanatorium. The directors shall be empowered to receive or accept the gifts or donations for the benefit of the state sanatorium, and the directors shall, in their discretion, use the same for carrying out the purpose for which the sanatorium is established.

1907, c. 964, s. 14; Ex. sess. 1913, c. 40, s. 6.

7178. Pay of directors. Each director shall be entitled to receive, as compensation, the sum of four dollars per day while engaged in conducting the affairs of the sanatorium, in addition to his necessary traveling expenses.

1907, c. 964, s. 15; Ex. sess. 1913, c. 40, s. 7.

7179. Indigent tuberculous to be treated at state sanatorium. Any city or town in the state of North Carolina, through its board of aldermen, town council, or other governing body, and any county in the state, through its board of commissioners, is hereby authorized and empowered to provide for the treatment of any tubercular person or persons resident in and who is a bona fide citizen of said city, town, or county, at the North Carolina sanatorium for the treatment of tuberculosis, and pay therefor to the North Carolina sanatorium for the treatment of tuberculosis an amount which shall not be more than one dollar per day per patient.

1915, c. 181, s. 1.

ART. 14. INFLAMMATION OF EYES OF NEWBORN

7180. Ophthalmia neonatorum described. Any inflammation, swelling, or unusual redness in either one or both eyes of any infant, either apart from or together with any unnatural discharge from the eye or eyes of such infant, independent of the nature of the infection, if any, occurring any time within two weeks after the birth of such infant, shall be known as "inflammation of the eyes of the newborn" (ophthalmia neonatorum).

1917, c. 257, s. 1.

7181. Inflammation of eyes of newborn to be reported. It shall be the duty of any physician, surgeon, obstetrician, midwife, nurse, maternity home, or hospital of any nature, parent, relative, and any persons attendant on or assisting in any way whatsoever any infant, or the mother of any infant at childbirth or any time within two weeks after childbirth, knowing the condition, hereinabove defined, to exist, immediately to report such fact, as the state board of health shall direct, to the local health officer of the county, city, town, village, or whatever other political division there may be within which the infant or the mother of any such infant may reside. For such services the attending physician, surgeon, obstetrician, midwife, nurse, maternity home, or hospital shall receive from the state treasurer a fee of fifty cents. In the event of there being no health officer in the city, village, or town in which the infant resides, midwives shall immediately report the condition to some qualified practitioner of medicine, and thereupon withdraw from the case, except as she may act under a physician's instructions. On receipt of such receipt, the health officer, or the physician notified by a

midwife where no health officer exists, shall immediately give to the parents or persons having charge of such infant a warning of the dangers to the eye or eyes of said infant, and shall for indigent cases provide the necessary treatment at the expense of the said county, city, village, or town.

1917, c. 257, s. 2.

7182. Eyes of newborn to be treated; penalty for omission. It shall be unlawful for any physician or midwife practicing midwifery in the state of North Carolina to neglect or otherwise fail to instill or have instilled, immediately upon its birth, in the eyes of the newborn babe, two drops of a solution prescribed or furnished by the state board of health.

1917, c. 257, s. 3.

7183. Duties of local health officer. It shall be the duty of the local health officer:

1. To investigate or to have investigated each case as filed with him in pursuance with the law, and any other such cases as may come to his attention.
2. To report all cases of inflammation of the eyes of the newborn and the result of all such investigations as the state board of health shall direct.
3. To conform to such other rules and regulations as the state board of health shall promulgate for his further guidance.

1917, c. 257, s. 4.

7184. Duties of state board of health. It shall be the duty of the North Carolina state board of health:

1. To enforce the provisions of this article.
2. To promulgate such rules and regulations as shall, under this article, be necessary for the purposes of this article, and such as the state board of health may deem necessary for the further and proper guidance of local health officers.
3. To provide for the gratuitous distribution of the scientific prophylactic for inflammation of the eyes of the newborn, as designated in section 7182, together with proper directions for the use and administration thereof, to all physicians and midwives as may be engaged in the practice of obstetrics or assisting at childbirth.
4. To publish and promulgate such further advice and information concerning the dangers of inflammation of the eyes of the newborn, and the necessity for prompt and effective treatment.
5. To furnish copies of this law to all physicians and midwives as may be engaged in the practice of obstetrics or assisting at childbirth.
6. To keep a proper record of any and all cases of inflammation of the eyes of the newborn as shall be filed in the office of the state board of health in pursuance with this law and as may come to their attention in any way, and to constitute such records a part of the biennial report to the governor and the legislature.

1917, c. 257, s. 5.

7185. Treatment in hospitals and institutions. It shall be the duty of physicians, midwives, or other persons in attendance upon a case of childbirth in a maternity home, hospital, public or charitable institution, in every infant's eyes,

within two hours after birth, to use the prophylactic against inflammation of the eyes of the newborn specified in this article, and to make record of the prophylactic used. It shall also be the duty of such institution to maintain such records of cases of inflammation of the eyes of the newborn as the state board of health shall direct.

1917, c. 257, s. 6.

7186. Violations of article; penalties. Whoever being a physician, surgeon, midwife, obstetrician, nurse, manager, or person in charge of a maternity home or hospital, parent, relative, or person attendant upon or assisting at the birth of any infant, violates any of the provisions of this article shall be deemed guilty of a misdemeanor, and upon conviction thereof be fined in a sum not less than ten dollars nor more than fifty dollars, and, if possessed of the required amount of property, subject to suit by the parent or guardian of the child for damages resulting to the child; and if such a suit shall be brought the establishment of the fact that the physician or midwife did not place the drops in the child's eyes within two hours of its birth shall be accepted as *prima facie* evidence of the physician's or midwife's responsibility for the injury of the disease to the eye or eyes of the child. It shall be the duty of the prosecuting attorney to prosecute all violations of this article.

1917, c. 257, s. 7.

7187. Registration of midwives. All midwives who now practice midwifery in North Carolina, other than regularly registered physicians, shall register, without fee, their names and addresses with the secretary of the North Carolina state board of health on or before the first day of July, one thousand nine hundred and seventeen, in order that the prophylactic solution and necessary instructions may be furnished them. After the aforesaid date no person, physician, or midwife shall practice midwifery in North Carolina until at least ten days have elapsed following the registration of the name and address of the person who intends to engage in the practice of midwifery, and in this period of ten days elapsing between the registration and beginning of the practice of midwifery by the registered person the state board of health shall furnish the necessary directions and solution to the physician or midwife for compliance with this article.

1917, c. 257, s. 8.

NOTE.—See further as to midwives, Medicine and Allied Occupations, art. 9.

7188. Failure to register; penalty. Any physician or midwife failing to register their names and addresses with the North Carolina state board of health as required in the preceding section shall be guilty of a misdemeanor and subject to a fine of from ten dollars to fifty dollars.

1917, c. 257, s. 9.

7189. Appropriation, disposal of fines and penalties; expenses. The sum of three thousand dollars shall be annually appropriated for the use of the state board of health in enforcing and carrying out the provisions of this article. Any and all necessary and legitimate expenses that may be incurred in prosecuting a case under this article shall, on proper showing, be met by the state board of health out of this appropriation. In addition thereto, all fines and penalties

recovered hereunder shall be paid into the state treasury and shall constitute a special fund for the use and purposes of the state board of health as herein enacted.

1917, c. 257, s. 10.

7190. Copies of article to be distributed. Every health officer shall furnish a copy of this article to each person who is known to him to act as midwife or nurse in the county, city, or town for which such health officer is appointed, and the secretary of state shall cause a sufficient number of copies of this article to be printed and supply the same to the health officer of the county, city, or town, and the state board of health, on application.

1917, c. 257, s. 11.

ART. 15. VENEREAL DISEASES

Part 1. Control and Treatment

7191. Venereal infection. Syphilis, gonorrhea, and chancroid, hereinafter designated as venereal diseases, are hereby declared to be contagious, infectious, communicable, and dangerous to the public health. It shall be unlawful for any one infected with these diseases or any of them to expose another person to infection.

1919, c. 206, s. 1.

7192. Physicians and superintendents of institutions to report cases. Any physician or other person who makes a diagnosis in or treats a case of venereal disease, and any superintendent or manager of a hospital, dispensary, or charitable institution in which there is a case of venereal disease, shall make a report of such case to the health authorities according to such form and manner as the North Carolina state board of health shall direct.

1919, c. 206, s. 2.

7193. Sources of infection investigated; suspected persons examined. State, county, and municipal health officers, or their authorized deputies, within their respective jurisdictions are hereby directed and empowered, when in their judgment it is necessary to protect the public health, to make examinations of persons reasonably suspected of being infected with venereal disease, and to detain such persons until the results of such examinations are known; to require persons infected with venereal disease to report for treatment to a reputable physician and continue treatment until cured or to submit to treatment provided at public expense until cured; and also, when in their judgment it is necessary to protect the public health, to isolate or quarantine persons infected with venereal disease. It shall be the duty of all local and state health officers to investigate sources of infection of venereal disease, to coöperate with the proper officials whose duty it is to enforce laws directed against prostitution, and otherwise to use every proper means for the repression of prostitution.

1919, c. 206, s. 3.

7194. Prisoners examined and treated; isolation of patients. All persons who shall be confined or imprisoned in any state, county, or city prison in the state

shall be examined for and, if infected, treated for venereal diseases by the health authorities or their deputies. The prison authorities of any state, county, or city prison are directed to make available to the health authorities such portion of any state, county, or city prison as may be necessary for a clinic or hospital wherein all persons who may be confined or imprisoned in any such prison and who are infected with venereal disease, and all such persons who are suffering with venereal disease at the time of the expiration of their terms of imprisonment, and, in case no other suitable place for isolation or quarantine is available, such other persons as may be so isolated or quarantined under the provisions of the first preceding section, shall be isolated and treated at public expense until cured; or, in lieu of such isolation, any of such persons may, in the discretion of the North Carolina state board of health, be required to report for treatment to a licensed physician or submit to treatment provided at public expense as provided in section 7193. Nothing herein contained shall be construed to interfere with the service of any sentence imposed by a court as a punishment for the commission of crime.

1919, c. 206, s. 4.

7195. Board of health may make rules and regulations to enforce this article.

The North Carolina state board of health is hereby empowered and directed to make such rules and regulations as shall in its judgment be necessary for the carrying out of the provisions of this article, including rules and regulations providing for the control and treatment of persons isolated or quarantined under the provisions of section 7193, and such other rules and regulations, not in conflict with provisions of this article, concerning the control of venereal diseases, and concerning the care, treatment, and quarantine of persons infected therewith, as it may from time to time deem advisable. All such rules and regulations so made shall be of force and binding upon all county and municipal health officers and other persons affected by this article, and shall have the force and effect of law.

1919, c. 206, s. 5.

7196. Expenses authorized. The North Carolina state board of health, through its officers, are hereby empowered and authorized to incur such expenses in the examination, detention, quarantine, and treatment of persons suspected of having, or having, venereal diseases as in their judgment is necessary.

1919, c. 206, s. 6.

7197. Statements of expenses to county commissioners; payment of expenses.

The North Carolina state board of health shall submit to the county commissioners of the county in which persons suspected of having, or having, venereal diseases are suspected of having spread the disease, an itemized statement of expenses incurred in the examination, detention, quarantine, or treatment of such persons, and the county commissioners shall, within thirty days after the receipt of such statement of expenses, pay to the treasurer of the North Carolina state board of health a sum equal to that expended.

1919, c. 206, s. 7.

7198. Violation of this article or authority pursuant thereto a misdemeanor. Any person who shall violate any of the provisions of this part of this article or any lawful rule or regulation made by the North Carolina state board of health pursuant to the authority herein granted, or who shall fail or refuse to obey any lawful order issued by any state, county, or municipal health officer, pursuant to the authority granted in this article, shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than twenty-five dollars, nor more than fifty dollars, or by imprisonment for not more than thirty days.

1919, c. 206, s. 8.

Part 2. Prescriptions and Reports

7199. Treatment except by physician unlawful. It shall be unlawful for any person except a regularly licensed physician to prescribe or give away any medicine for the treatment of any person afflicted with venereal disease.

1919, c. 214, s. 1.

7200. Patented and proprietary remedies; druggists to report sales of. Any druggist or other person who sells at retail any patented, proprietary, or trademark remedy or alleged remedy advertised or recommended or sold for or used in the treatment of venereal diseases (gonorrhea, syphilis, or chancroid) or lost manhood, impotency, or sterility, or medicinal preparations containing the oils of cubebs, copaiba, sandalwood, or the oils themselves, iodides of mercury, or preparations compounded for urethral injections, shall report weekly on forms and in accordance with instructions supplied by the North Carolina state board of health the sale of such remedies or alleged remedies to the bureau of venereal diseases of the North Carolina state board of health.

1919, c. 214, s. 2.

7201. Obtaining prescription or remedy under false name a misdemeanor. Any person who, in obtaining a prescription from a physician under section 7199, or in obtaining drugs or remedies mentioned in section 7200, gives a false or assumed name or address, shall be guilty of a misdemeanor and subject to the penalties imposed in section 7206.

1919, c. 214, s. 3.

7202. Quarantine officer may appoint physicians as agents to issue prescriptions. For the convenience of the public, a quarantine officer, either municipal or county, shall appoint, on the official request of the North Carolina state board of health, from the regularly registered physicians of the county one or more agents to issue prescriptions for drugs or remedies, necessary for treatment of such diseases.

1919, c. 214, s. 4.

7203. Fees of quarantine officer and agents. A quarantine officer or agent of a quarantine officer who issues a prescription for any such drug, remedy, or alleged remedy, and who instructs a person infected with venereal disease as required by the state laws and reports by number but without identification as now prescribed for reports by physicians for such diseases to the North Carolina state board of health, shall be entitled to a fee of fifty cents, twenty-five cents of

which shall be paid by the bureau of venereal diseases of the North Carolina state board of health, and twenty-five cents of which shall be paid by the county commissioners of the county in which the quarantine officer has jurisdiction, on a certification of the bureau of venereal diseases of the North Carolina state board of health of the number of prescriptions issued by the quarantine officer or the quarantine officer's agent: Provided, that the municipal authorities shall pay the above amount for prescriptions issued by a municipal quarantine officer or his agent. No quarantine officer shall be entitled to any pay from either county or city for issuing prescriptions to persons who pay the quarantine officer in part or in full for the issuance of prescriptions. Several prescriptions issued on a single visit of the infected person to the quarantine officer shall entitle the said officer to not more than the fee for a single prescription.

1919, c. 214, s. 5.

7204. Druggists to keep record of prescriptions; subject to inspection. Any and all prescriptions for venereal diseases (gonorrhea, syphilis, or chancroid), or impotency, sterility, or lost manhood, or prescriptions containing the drugs, remedies, or alleged remedies mentioned in section 7200, shall be kept by a druggist on a separate file, and shall be subject at any reasonable hour to inspection by an officer of the North Carolina state board of health.

1919, c. 214, s. 6.

7205. Purchaser of remedies may be examined. The state health officer or his deputy or agent may require any purchaser of remedies or alleged remedies designated in section 7200, and who may be reasonably supposed to be infected with a venereal disease, to appear before a regularly licensed physician, quarantine officer or agent, for an examination for such disease.

1919, c. 214, s. 7.

7206. Violation of this article a misdemeanor. Any person violating any of the provisions of this part of this article shall be guilty of a misdemeanor and shall be fined not less than ten dollars nor more than fifty dollars, or imprisoned for not exceeding thirty days.

1919, c. 214, s. 8.

ART. 16. HEALTH OF PRISONERS

Part 1. Segregation of Tuberculous Prisoners

7207. Tuberculous county prisoners to be segregated. The board of county commissioners of the respective counties of North Carolina shall provide in the jail-house or in any camp or place where prisoners are committed for keeping or sentenced to a term of imprisonment in any county in the state of North Carolina, separate cells or rooms or a place in which shall be confined any prisoner or prisoners who may be committed for keeping or sentenced to said prison or place of confinement for a term of imprisonment, who has been examined by the county physician or county health officer and pronounced to be affected with tuberculosis.

1907, c. 567, s. 1.

7208. Sheriff to have prisoners suspected to be tuberculous examined and separated. When a prisoner is placed in the custody of a sheriff for the purpose of being committed to jail or to any place where prisoners are kept, and the sheriff has reason to believe or suspect that the prisoner is suffering with tuberculosis, it shall be the duty of the sheriff to have such prisoner examined by the county physician or county health officer, and if upon examination the prisoner is pronounced tubercular, then he shall be separated from other prisoners and confined in a separate cell or other place of confinement.

1907, c. 567, s. 2.

7209. Tuberculous state prisoners to be segregated. It shall be the duty of the board of directors of the state's prison to provide separate cells or apartments for the confinement of prisoners sentenced to that institution for a term of imprisonment, who have been examined and pronounced by the physician in charge to be affected with tuberculosis.

1907, c. 567, s. 3.

7210. Separate cells for tuberculous prisoners; fumigation. Cells or places of confinement provided for prisoners affected with tuberculosis must be kept exclusively for such prisoners, and when they have been occupied by tuberculous prisoners they shall not be used for other prisoners until the county physician or county health officer, or the physician in charge and the health authorities of the state's prison, have been notified, and until such cells or places of confinement have been thoroughly fumigated and disinfected under the supervision of such officials in the manner required by the state board of health.

1907, c. 567, s. 4.

7211. Prison authorities to have prisoners suspected to be tuberculous examined. When a prisoner is committed to any prison or place of confinement designated in this article, and the sheriff of the county, the warden of the state's prison or other authorities of the prison know or suspect the prisoner to be suffering with tuberculosis, it shall be the duty of such authorities to cause the prisoners to be examined by the county physician, the county health officer, or the physician in charge within five days after the prisoner has been committed or sentenced to the prison.

1907, c. 567, s. 5.

7212. Prisoners may be worked together. Nothing contained in any of the preceding sections of this article shall be so construed as to interfere with or prevent the county or state authorities from working together all prisoners on public works as now provided for by law.

1907, c. 567, s. 6.

Part 2. Prevention of Tuberculosis Among Prisoners

7213. Tuberculous prisoners to be sent to state farm; prisoner's consent. No prisoner suffering with tuberculosis shall be kept in any county convict camp, or on any public or private works, or in any jail (except, in the latter case, when said prisoner is awaiting trial), but such prisoner suffering with tuberculosis shall be sent to the state farm within forty-eight hours after the physician in

charge shall have made a diagnosis of tuberculosis, the county in which said prisoner is confined bearing the expense of transfer, and it shall be the duty of the sheriff to make such transfer. But no such prisoner shall be sent to the state farm unless he has first consented thereto in writing in the presence of the sheriff of the county where the prisoner may be under sentence. The sheriff shall subscribe his name as a witness thereto and shall take and file the same with the clerk of the superior court of the county, who shall enter the same in a book to be kept for that purpose: Provided, that no such prisoner shall be kept at the state farm or central prison for a longer term than the length of his original sentence.

1917, c. 262, s. 1.

7214. Provision for care and cure of prisoners. The board of directors of the central prison and state farm and the superintendent of the said central prison and state farm shall without delay make such provision for the care of such prisoners suffering with tuberculosis as will prevent their communicating the disease to the other prisoners, and to the end that such prisoners suffering with tuberculosis may be restored to health, if it be possible.

1917, c. 262, s. 2.

7215. Board of health must approve plans for prisoners. It shall be the duty of the prison management to submit the plans for carrying into effect the two preceding sections to the state board of health for its approval, and they are required to make their plans, both for buildings and care of patients, conform to the recommendations of the state board of health.

1917, c. 262, s. 3.

7216. Health authorities to examine all prisoners. It shall be the duty of every county physician or city physician, or county health officer or city health officer, or other physician having in charge the medical care of prisoners in any city or county in this state, or on any public or private works where prisoners or convicts are employed, to make a thorough physical examination of every prisoner committed to the county or city jail or to the county or city chain-gang or road force, or any public or private works within forty-eight hours after the admission of such prisoner; and when he finds a prisoner suffering with tuberculosis, he shall make a written report of same to the state board of health, stating in detail the conditions found and the stage of the disease, within twenty-four hours after making such diagnosis, and he shall also report same to the superintendent of the chain-gang or the jailer or the superintendent of the public or private works, and to the sheriff of the county, in writing, within twenty-four hours after having made such diagnosis of tuberculosis.

1917, c. 262, s. 4.

7217. Officials in charge of prisoners to report on health. Every superintendent of convicts, or superintendent of public or private works where convicts are employed, and the superintendent of the central prison and state farm, and every jailer, shall make such reports as to the existence of cases of tuberculosis or suspected cases of tuberculosis, or other disease or diseases, and loss of time on account of sickness, and the disease or diseases causing such loss of time and such

other things that may have a bearing on the health of the prisoners and the sanitation of the camp, prison, or jail, to the state board of health at such stated periods and on such stated forms as may be requested by the state board of health. And every health officer or other physician having charge of prisoners in county convict camps, on county or city roads or streets or public or private works, or in jails or prisons, state, city, or county, shall likewise make such reports to the state board of health as to the physical condition and transfer of prisoners and as to the sanitary condition of camps, jails, or prisons, as may be requested by the state board of health.

1917, c. 262, s. 5.

7218. Reports to include transference and particulars as to tuberculous. The superintendent of the central prison or state farm, convict camp, or of any public or private works where convicts are used, and the jailers of the county jails and the sheriff of the county, and the medical officer connected with any of the above mentioned places where convicts are kept or worked, shall make such reports to the state board of health as to transference of prisoners suffering with tuberculosis, giving name of prisoner, length of time said prisoner had been under his jurisdiction, the stage of the disease, point or place to which he was transferred, name and address and official title of the person to whom he was transferred, and such other information as may be requested by the state board of health.

1917, c. 262, s. 6.

7219. Food and work of tuberculous prisoners. In order more effectively to promote the recovery of tuberculous prisoners, it shall be the duty of the superintendent of the central prison and state farm and such other officers as may have jurisdiction under him to provide such additional food for prisoners suffering with tuberculosis as may be prescribed or requested by the physician in charge. And such prisoners suffering with tuberculosis shall only do such work as may be prescribed by the prison physician.

1917, c. 262, s. 7.

7220. Violation of article misdemeanor. Any person violating any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction shall be punished in the discretion of the court.

1907, c. 567, s. 7; 1917, c. 262, s. 8.

ART. 17. SURGICAL OPERATIONS ON INMATES OF STATE INSTITUTIONS

7221. Operations for improvement of mental, moral, or physical condition. The medical staff of any penal or charitable hospital or institution of the state of North Carolina is hereby permitted and instructed to have any surgical operation performed by competent and skillful surgeons upon any inmate of any such penal or charitable hospital or institution when, in the judgment of the board hereinafter created in the next succeeding section, such operation would be for the improvement of the mental, moral, or physical condition of such inmate of any such institution: Provided, such operation shall not be performed until same shall have been affirmed by the governor and the secretary of the state board of health.

1919, c. 281, s. 1.

7222. **Board of consultation for carrying out provisions of this article.** At least one representative of the medical staff of the several charitable and penal institutions of the state, and one from the state board of health, such representatives to be designated by the governing bodies of the several institutions, shall constitute a board of consultation for the carrying out of the provisions of this article. Such board shall cause a permanent record to be kept by one of its members, designated as secretary, of all its actions and judgments, taken at a meeting held only after due notice has been issued to all its members.

1919, c. 281, s. 2.

ART. 18. MARITIME QUARANTINE

Part 1. Quarantine on Cape Fear River

7223. **North Carolina station for maritime quarantine.** There shall be established, at the nearest suitable site, opposite the present quarantine anchorage at Deepwater Point, a station to be known and designated as The North Carolina Station for Maritime Sanitation. For the purpose of selecting a suitable site, the quarantine board, the chairman of the board of commissioners of navigation and pilotage of the port of Wilmington, and the mayor of Southport shall constitute a board, who shall acquire by purchase, or otherwise, sufficient land and water privileges for the purpose—the title to which shall be vested in the quarantine board and their successors in office, who are hereby constituted trustees to hold said quarantine site for the state of North Carolina. Upon the site so acquired shall be erected such wharves, buildings, apparatus, and machinery as are necessary for all the purposes of maritime sanitation, and the system of sanitation to be used shall be devised by and subject to the approval of a board to consist of the quarantine board and the president and secretary of the state board of health. The said station, with its wharves, buildings, apparatus, and machinery, shall be erected under the direction and be under the supervision of the quarantine board, and they shall prescribe all such rules and regulations as are necessary for its government and its maintenance.

Rev., s. 4530; 1893, c. 505.

7224. **North Carolina station available for all state ports.** Such quarantine station, established as provided in the preceding section, shall be and the same is hereby made a relief station to which vessels having on board persons who have been or are sick with infectious diseases, or the baggage of persons who have died of infectious disease during the voyage of said vessels, applying at any other port or ports of North Carolina, shall come for disinfection, whenever so directed by the quarantine officer of such other port or ports.

Rev., s. 4531; 1893, c. 505, s. 3.

7225. **Appropriation for North Carolina station.** For the purpose of carrying into effect the provisions of the preceding section the sum of twenty thousand dollars is appropriated out of any moneys in the state treasury not otherwise appropriated, to be paid from time to time as required in the prosecution of the work, on the requisition of the treasurer of the quarantine board and approved by its president: Provided, that the funds appropriated by this section shall not

be paid over by the treasurer until the governor and state board of health of North Carolina shall certify to the treasurer that there is imminent danger of cholera visiting the city of Wilmington or other sections of the state.

Rev., s. 4532; 1893, c. 505, s. 2.

7226. Fees and penalties for upkeep of North Carolina station. All fees collected from vessels, as provided in section four thousand five hundred and twenty-two, and all penalties and forfeitures collected for violations of the quarantine regulations of the port of Wilmington, shall constitute a fund in the hands of the quarantine board, and shall be used by them for the purpose of preserving the site established on the Cape Fear river, improving the buildings and wharves and keeping them in repair, and for such other purposes as may be necessary for the efficient management of the quarantine service.

Rev., s. 4533; 1889, c. 521, s. 6.

7227. Cape Fear quarantine station; quarantine board and officer. For the preservation of the public health there shall be established opposite Deepwater Point, near the mouth of the Cape Fear river, a quarantine station, where all vessels subject to quarantine shall be brought to anchor, and await the inspection of the quarantine medical officer, appointed as provided in the following section, and he may prescribe rules and regulations to which vessels subject to quarantine shall conform. The rules and regulations so prescribed may be revised and added to from time to time as circumstances require by the quarantine medical officer and two physicians of skill and experience, residing in the city of Wilmington, who shall be designated by the president of the state board of health, and they shall meet annually on the first Monday in May, or as soon thereafter as practicable, and organize for the purposes before mentioned by the election of a president and secretary; and it shall be the duty of the president to call meetings whenever any special emergency shall arise requiring new quarantine rules and regulations, and of the secretary to keep a record of all such proceedings; and they shall be entitled to compensation for their services at the rate of one hundred dollars per year.

Rev., s. 4526; Code, s. 2912; 1889, c. 521; 1868, c. 33, s. 1; 1879, c. 123.

7228. Governor to appoint quarantine officer; duties. It shall be the duty of the governor to designate some physician of experience, who shall act as medical quarantine officer for the station referred to in the preceding section, and who shall prescribe such regulations as may be necessary for the protection of the inhabitants from infectious diseases, and all persons shall be bound by such regulations, under penalties to be hereafter designated. The quarantine officer shall duly advertise all quarantine regulations and cause the pilots to be especially notified of them. He shall make a monthly report of all receipts and disbursements, and shall pay over all moneys to the treasurer of the state, and shall be removable at the pleasure of the governor.

Rev., s. 4527; Code, s. 2913; 1868, c. 33, s. 2.

7229. Boat and crew for use of officer. There shall be provided for the use of the quarantine officer on the Cape Fear river a suitable boat furnished with all necessary materials, and he shall employ a crew of four men, at such seasons as

quarantine regulations are in force, or when the public health may require it. He shall cause the boat to be kept in repair and always ready for service, and may employ some competent person for the service, who shall be paid by the state treasurer, on the certificate of the medical officer that the services were necessary and the charges just and reasonable.

Rev., s. 4529; Code, s. 2914; 1868, c. 33, s. 3.

7230. Pay of quarantine officer and boat's crew. The compensation of the quarantine medical officer on the Cape Fear river shall be six hundred dollars per year, and the compensation of the boat's crew shall be thirty dollars per month each, while regularly employed: Provided, one of the crew may be designated by the quarantine officer to take care of the buildings, boats, and materials at an extra compensation of ten dollars per month while so employed.

Rev., s. 4528; Code, s. 2921; 1889, c. 521, s. 4; 1868, c. 33, s. 10.

7231. Fees charged on vessels. Every vessel subject to visit and inspection shall pay a fee of five dollars, if of less than two hundred and fifty tons burden; if of more than two hundred and fifty and less than five hundred tons burden, eight dollars; if of more than five hundred and less than one thousand tons burden, ten dollars; if over one thousand tons, fifteen dollars, which shall be collected and accounted for by the quarantine officer, as provided for in this article, and every person taken to the hospital shall pay a fee not exceeding three dollars per day, until discharged by the quarantine officer, for the payment of which the vessel shall be responsible, and only such vessel shall be subject to visit and inspection as may be from ports designated, from time to time, by the medical officer, except that all vessels having sickness on board shall be brought to the visiting station for examination.

Rev., s. 4522; Code, s. 2916; 1868, c. 33, s. 5; 1891, c. 533.

7232. Pilots to bring vessels to station; penalty. It shall be the duty of all pilots to bring vessels to the visiting station, as they may be required from time to time by the quarantine officer, and they shall not take any vessel subject to quarantine or visitation, past the station, until released by the quarantine officer; and any pilot who shall wilfully violate any quarantine regulation shall forfeit his branch or commission, and thence be incapable to act as a pilot in any port in the state.

Rev., s. 4512; Code, s. 2917; 1868, c. 33, s. 6.

7233. Master refusing to obey regulations; penalty. Any master of a vessel who shall refuse to obey the quarantine regulations shall forfeit and pay a fine of two hundred dollars for each day he shall refuse to obey the same, for which forfeiture the property of the captain, together with the vessel and cargo, shall be held responsible.

Rev., s. 4523; Code, s. 2918; 1868, c. 33, s. 7.

7234. Violating quarantine regulations; penalty. Any person who shall violate the quarantine regulations, as prescribed from time to time by the quarantine officers, shall forfeit and pay the sum of two hundred dollars for each offense; and all penalties and forfeitures imposed by this chapter may be recovered before any

court having jurisdiction, one-half to the informer, the other half to the payment of the expenses of the quarantine establishment. Any person who shall violate any of the rules and regulations made by the quarantine board for the control, government, and maintenance of the quarantine station on Cape Fear river, as provided for in this part of this article, shall be guilty of a misdemeanor.

Rev., ss. 3450, 4524; Code, s. 2919; 1868, c. 33, s. 8.

7235. Quarantine officer may issue warrants. The quarantine medical officer may issue a warrant to any sheriff or other officer, commanding him to arrest the body of any person violating the quarantine, and have him without delay before some competent jurisdiction for trial.

Rev., s. 4525; Code, s. 2920; 1868, c. 33, s. 9.

7236. Site may be sold and new site purchased. If the quarantine board, on investigation, shall consider a site further removed from inhabited places as essential to the public safety, and shall so recommend, it shall be the duty of the governor to sell the present hospital site at Price's Creek in such manner as he may deem best, and make title to the purchaser thereof, and the moneys received for said site to turn over to the quarantine board, to be used by them for quarantine purposes at some other point as convenient as possible to the quarantine anchorage off Deepwater Point.

Rev., s. 4534; 1889, c. 521, s. 5.

Part 2. General Provisions

7237. Control of maritime quarantine; rules. Except as otherwise provided in this chapter, the commissioners of navigation in the respective ports and inlets of the state, or where there are no commissioners of navigation, the governing authorities of any seaport town, may appoint such place or places as they may think proper for vessels to perform quarantine; and when a vessel shall arrive at any port or inlet of this state, having an infectious distemper on board, or shall come from any place or port which at the time of her sailing, or shortly before, was infected with any malignant disorder, the master and pilot of such vessel shall anchor her at the place so appointed, and give immediate information thereof to the county physician or health officer of the county in which such port is situated or to the municipal physician or health officer of such town, who shall thereupon cause such vessel and her crew to be examined by the county or municipal health authorities, who shall have power to order and command the master of the vessel, crew, and passengers to perform such quarantine as shall be deemed most proper and reasonable to check or prevent any infectious distemper from spreading in this state, and to require every person on board such vessel strictly to perform quarantine, and to obey the orders given by the health authorities aforesaid respecting the victualing, purifying, and cleansing of such vessel and all articles on board, and to regulate and control the intercourse of such persons with the inhabitants of the state, the receiving any person on board or the putting them on shore; and if any pilot or master neglect to give such information as above required, the pilot for such neglect shall forfeit and pay one hundred dollars, and the master for a like neglect shall forfeit and pay two hundred dollars. In case the master of any vessel ordered to perform quaran-

tine should refuse to comply with or fail to fulfill the orders for performing quarantine with his vessel, he shall forfeit and pay two hundred dollars for each day he shall fail to perform the quarantine. The property of the captain, together with the vessel and cargo, whether owned by the captain or not, shall be liable for the penalty herein imposed. If there be at the port where the vessel enters a port physician, as provided for in this article, he shall perform the duties and have all the power by this section conferred upon the health authorities aforesaid. The state authorities shall coöperate in all matters of quarantine with the federal authorities.

Rev., s. 4510; Code, s. 2893; R. C., c. 94, s. 1; 1783, c. 194, s. 12; 1793, c. 379, s. 1; 1802, c. 624.

NOTE.—For the office and duties of commissioners of navigation, see Navigation.

7238. Commissioners of navigation; appoint harbor master and health officer. The commissioners of navigation of the several seaport towns in the state shall have power to appoint a harbor master and health officer, to prescribe their duties and authority, to make rules and regulations for their government, allow them a reasonable compensation for their services, and determine how such compensation is to be paid. And they shall have power to pass such by-laws (not inconsistent with the laws of the land) for the better regulation of the quarantine to be performed by vessels arriving from ports infected or suspected to be infected with any infectious disease, and for preventing all intercourse between such vessels and persons on shore, as to them may seem meet and proper, and to enforce obedience to such by-laws by imposing such penalties as they may think proper.

Rev., s. 4537; Code, s. 2905; R. C., c. 94, s. 13.

7239. Governing authorities of seaport towns; powers. The governing authorities of the several seaport towns and towns having a port of entry, where there are no commissioners of navigation, shall have the same power and authority and be subject to the same duties as are prescribed for the commissioners of navigation in relation to the quarantine of vessels in the ports of their respective towns; and all persons offending against the regulations of such governing authorities shall be subject to the same fines, penalties, and forfeitures as though the said regulations had been made by the commissioners of navigation.

Rev., s. 4536; Code, s. 2906; R. C., c. 94, s. 14.

7240. Port physician; appointment. The commissioners of navigation in the several ports of the state, and, where there are no such commissioners, the governing authorities of the several seaport towns, may appoint port physicians, and regulate and prescribe the fees to which they shall be respectively entitled, according to the different quarantine stations, which they shall be bound to attend for the purpose of inspecting vessels, as required by this article, and giving certificates of their situation and condition, in regard to the health of their respective crews and passengers.

Rev., s. 4517; Code, s. 2896; R. C., c. 94, s. 3; 1817, c. 946, s. 2.

7241. Vessels from infected ports to anchor at quarantine; punishment for failure. If any vessel shall be brought into the state from a place which at the time of her departure was infected with the yellow fever, smallpox, or other infectious disorder, or if any vessel, arriving in the state, shall have the smallpox

or yellow fever or other infectious disorder on board, or shall have had such disorder on board during her passage to the state, such vessel shall be anchored at the place appointed for quarantine, and there remain until permitted to remove by the commissioners of navigation, or by the municipal authorities of the town to which the vessel is bound, or by the county physician or health officer. If such vessel shall come to any town or harbor without permission obtained as herein required, the pilot or master conducting the vessel or permitting her to be so conducted shall be guilty of a misdemeanor, and fined not less than one thousand dollars and imprisoned not exceeding one year.

Rev., ss. 3451, 4511; Code, s. 2894; R. C., c. 94, s. 2; 1817, c. 946, s. 1.

7242. Pilots bringing in vessels without certificate; penalty. If any pilot shall bring any vessel beyond the place fixed and limited by the commissioners of navigation without a certificate of the health officer declaring that there is no danger to be apprehended from any infectious disease on board said vessel, such pilot shall forfeit his branch or commission, and thence be incapable to act as a pilot in any port of the state.

Rev., s. 4513; Code, s. 2904; R. C., c. 94, s. 12; 1797, c. 486, s. 2.

7243. Master must declare health of crew. The commissioners of navigation or the county physician or health officer may, whenever they think proper, require the master of a vessel, on his arrival in the state, to declare on oath the state of the health of himself, crew, and passengers, and the place whence he came. And if any master shall give a false declaration, or any physician shall wilfully give a false certificate of the health of the persons on board any such vessel, he shall forfeit and pay two thousand dollars.

Rev., s. 4514; Code, s. 2901; R. C., c. 94, s. 9; 1793, c. 379, s. 6.

7244. Vessel removed to quarantine. The commissioners of navigation or (where there are no such commissioners) the governing authorities of the town in the harbor of which any vessel has arrived in violation of this article, or the county physician or county health officer as aforesaid, may use such force as shall be necessary to remove said vessel to the place of quarantine; their reasonable charge for which service shall be paid by the master or owner of the vessel, and may be recovered of either of them before any court having jurisdiction.

Rev., s. 4515; Code, s. 2895; R. C., c. 94, s. 3; 1817, c. 946, s. 2.

7245. Vessel furnished with provisions. The commissioners of navigation or (where there are no such commissioners) the governing authorities of the seaport town are empowered and directed to furnish any vessel, ordered to ride quarantine, with a sufficient quantity of good wholesome provisions, for the expense of which the master, vessel, and cargo shall be liable.

Rev., s. 4516; Code, s. 2902; R. C., c. 94, s. 10; 1793, c. 379, s. 7.

7246. Going on quarantined vessel; penalty. When any vessel shall be directed to perform quarantine, and any person knowing of such order, by the information of the master or otherwise, shall go on board of such vessel without permission of the commissioners of navigation or the county physician or county health officer aforesaid, such person shall forfeit and pay one hundred dollars. If any person shall be permitted by the master to come on board without informing him of the

orders as to quarantine and intercourse given as provided in section 7237 of this article, the master shall forfeit and pay two hundred dollars for every person so offending, and four hundred dollars for suffering any person so on board to depart his vessel without permission as provided in this article, and the commissioners of navigation or the county physician or county health officer are empowered to order every person who shall go on board any such vessel to remain there for such length of time as they may think proper; and if he disobey such order, he shall pay one hundred dollars.

Rev., s. 4518; Code, s. 2898; R. C., c. 94, s. 6; 1793, c. 397, s. 3.

7247. Landing goods from quarantined vessels; penalty. If any master of a vessel ordered to ride quarantine shall convey, or cause or permit to be conveyed, any article of goods, wares, and merchandise from his vessel on any other lands or into any other boat or vessel than the commissioners of navigation or the county physician or county health officer shall authorize, he shall forfeit and pay two hundred dollars for every such offense. And any other person so conveying, or causing to be conveyed, any article as above mentioned, shall be liable to the like penalty.

Rev., s. 4519; Code, s. 2900; R. C., c. 94, s. 8; 1793, c. 379, s. 5.

7248. Person breaking quarantine to be returned. The commissioners of navigation or the county physician or county health officer, respectively, may issue their warrant to any sheriff or other officer, commanding him to take the body of any person that may have left any vessel ordered to ride quarantine, and carry him on board of said vessel; and the officer may summon such persons to assist him in the execution of the warrant as he may see fit.

Rev., s. 4520; Code, s. 2899; R. C., c. 94, s. 7; 1793, c. 379, s. 4.

7249. Penalty for breaking quarantine. When a vessel shall be directed to perform quarantine, and any seaman or passenger shall, contrary to the order and direction of the commissioners of navigation or the county physician or county health officer, leave the vessel and land on any other place than they shall allow, the seaman or passenger offending shall forfeit and pay two hundred dollars for each offense; and when he has left the vessel with the master's consent, the master shall pay a like penalty of two hundred dollars for every such offense of any of his passengers or seamen.

Rev., s. 4521; Code, s. 2897; R. C., c. 94, s. 5; 1793, c. 379, s. 2.

7250. Disposition of penalties and forfeitures. All penalties and forfeitures imposed by this article may be recovered and applied, one-half to the use of the informer, the other half by the commissioners of navigation for the use and benefit of the navigation of the port within whose jurisdiction the penalty or forfeiture may have been incurred.

Rev., s. 4538; Code, s. 2903; R. C., c. 94, s. 11; 1793, c. 379, s. 8.

ART. 19. CHAPTER NOT TO AFFECT POWERS UNDER SPECIAL LAWS

7251. Powers of local boards not affected. Nothing in this chapter shall operate as a repeal or abridgment of powers conferred by any special act on any local board of health.

Rev., s. 4458; 1893, c. 214, s. 30.

CHAPTER 119

PUBLIC HOSPITALS

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ART. 1. ORTHOPÆDIC HOSPITAL

7252. Appropriation for buildings; condition. There is hereby appropriated out of the money in the treasury not otherwise appropriated the sum of twenty thousand dollars for the purpose of the erection of buildings and the furnishing of the same to the North Carolina orthopædic hospital: Provided, that this sum shall not be available until twenty thousand dollars shall have been subscribed in good faith, for the same purpose, from sources other than the state of North Carolina.

1917, c. 199, s. 1.

7253. Committee to select site. The governor shall appoint a committee of five to select a proper site for the location of said orthopædic hospital, which commit-

tee, in making its selection, shall be governed by the advantages offered for the maintenance and support of the institution, and the board of trustees hereinafter named shall thereupon proceed to erect suitable buildings necessary to carry out the purposes of said orthopædic hospital.

1917, c. 199, s. 3.

7254. Board of trustees; term of office; organization and powers. The governor shall appoint a board of trustees, consisting of nine members, for said institution, and they shall be divided into three classes of three members each. The first class shall be appointed for two years, the second for four years, and the third class for six years. They shall hold their offices until their successors have been appointed, and the term of office of each shall begin from the date of the selection of the site as above mentioned. The governor shall fill all vacancies occurring by reason of death, resignation, or otherwise. The board of trustees shall organize by electing from its members a president, a secretary, and a treasurer, and three of its members as an executive committee. The board shall have power to erect any buildings necessary, make improvements, or in general do all matters and things that may be beneficial to the good government of the institution, and to this end they may make by-laws for the government of the same.

1917, c. 199, s. 4.

ART. 2. MUNICIPAL HOSPITALS

Part 1. Hospitals in Counties, Townships, and Towns

7255. Establishment of public hospitals; election, tax, and bond issue. Any county, township, or town may establish a public hospital in the following manner:

1. *Petition presented.* A petition may be presented to the governing body of any county, township, or town, signed by two hundred resident freeholders of such county, township, or town, one hundred and fifty of whom, in the case of a county, shall not be residents of the city, town, or village where it is proposed to locate such hospital, asking that an annual tax may be levied for the establishment and maintenance of a public hospital at a place in the county, township, or town named therein, and specifying the maximum amount of money proposed to be expended in purchasing or building such hospital.

2. *Election ordered.* Upon the filing of such petition the governing body of the county, township, or town shall order a new registration and shall submit the question to the qualified electors at the next general election to be held in the county, township, or town, or at a special election called for that purpose, first giving ninety days notice thereof in one or more newspapers published in the county, township, or town, if any be published therein, and by posting such notice, written or printed, in each township of the county, in case of a county hospital, which notice shall include the text of the petition and state the amount of the tax to be levied upon the assessed property of the county, township, or town. The election shall be held at the usual places in such county, township, or town for electing officers, and the vote shall be canvassed in the same manner as in elections for officers for such county, township, or town.

3. *Tax to be levied.* The tax to be levied under such election shall not exceed

one-fifteenth of one cent on the dollar for a period of time not exceeding twenty years, and shall be for the issue of county, township, or town bonds to provide funds for the purchase of a site and the erection thereon of a public hospital and hospital buildings.

1913, c. 42, s. 1; 1917, cc. 98, 268; 1919, c. 332, s. 1.

7256. Election on tax levy; collection and application of funds. The governing body of such county, township, or town shall submit to the qualified electors thereof, at a regular or special election, the question whether there shall be levied upon the assessed property of such county, township, or town a tax of one-fifteenth of one cent on the dollar for the purchase of real estate for hospital purposes, for the construction of hospital buildings, and for maintaining same, or for either or all of such purposes. The ballots to be used at any election at which the hospital question is submitted shall be printed with a statement substantially as follows:

☐ Yes.

For a cent tax for a bond issue for a public hospital and for maintenance of same.

☐ No.

If a majority of the qualified voters at such election on the proposition shall be in favor of a tax as submitted for a bond issue for a public hospital and for maintenance of same, the governing body shall levy the tax so authorized, which shall be collected in the same manner as other taxes are collected, and credited to the "Hospital Fund," and shall be paid out on the order of the hospital trustees for the purposes authorized by this article, and for no other purposes whatever.

1913, c. 42, s. 2; 1917, c. 268; 1919, c. 332, s. 2.

7257. Trustees; term of office; qualification and election. Should a majority of the qualified voters upon the question be in favor of establishing such county, township, or town hospital, the governing body shall proceed at once to appoint seven trustees chosen from the citizens at large with reference to their fitness for such office, three of whom may be women, all residents of the county, township, or town, not more than four of said trustees to be residents of the city, town, or village in which said hospital is to be located, in case of a county hospital, who shall constitute a board of trustees for such public hospital. The trustees shall hold their offices until the next following general election, when seven hospital trustees shall be elected and hold their offices, two for two years, two for four years, three for six years, and who shall by lot determine their respective terms. At each subsequent general election the offices of the trustees whose terms of office are about to expire shall be filled by the nomination and election of hospital trustees in the same manner as other officers are elected, none of whom shall be practicing physicians.

1913, c. 42, s. 3; 1917, c. 98, s. 2; 1917, c. 268.

7258. Officers elected by trustees; compensation. The trustees shall, within ten days after their appointment or election, qualify by taking the oath of civil officers and organize as a board of hospital trustees by the election of one of their

number as chairman, one as secretary, and by the election of such other officers as they may deem necessary, but no bond shall be required of them. The treasurer of the county, township, or town in which such hospital is located shall be treasurer of the board of trustees. The treasurer shall receive and pay out all moneys under the control of said board, as directed by it, but shall receive no compensation from such board. No trustee shall receive any compensation for his services performed, but he may receive reimbursement for any cash expenditures actually made for personal expenses incurred as such trustee, and an itemized statement of all such expenses and money paid out shall be made under oath by each of such trustees and filed with the secretary, and allowed only by the affirmative vote of all the trustees present at a meeting of the board.

1913, c. 42, s. 4; 1917, c. 268.

7259. Trustees to have control, and to make regulations. The board of hospital trustees shall make and adopt such by-laws, rules and regulations for their own guidance and for the government of the hospital as may be deemed expedient for the economic and equitable conduct thereof, not inconsistent with this article and the ordinances of the city or town wherein such public hospital is located. They shall have the exclusive control of the expenditure of all money collected to the credit of the hospital fund, and the purchase of the site or sites, the purchase or construction of any hospital building or buildings, and of the supervision, care, and custody of the grounds, rooms, or buildings purchased, constructed, leased, or set apart for that purpose.

1913, c. 42, s. 4.

7260. Power of board to appoint superintendent and assistants. The board of hospital trustees shall have power to appoint a suitable superintendent or matron, or both, and necessary assistants, and fix their compensation, and shall also have power to remove such appointees; and they shall in general carry out the spirit and intent of this article in establishing and maintaining a county, township, or town public hospital with equal rights to all and special privileges to none.

1913, c. 42, s. 4; 1917, c. 268.

7261. Meetings of board; reports required. The board of hospital trustees shall hold meetings at least once each month, and shall keep a complete record of all its proceedings. Four members of the board shall constitute a quorum for the transaction of business. One of the trustees shall visit and examine the hospital at least twice each month, and the board shall, during the first week in January of each year, file with the governing body of the county, township, or town a report of their proceedings with reference to such hospital, and a statement of all receipts and expenditures during the year; and they shall at such time certify the amount necessary to maintain and improve the hospital for the ensuing year. No trustee shall have a personal pecuniary interest, either directly or indirectly, in the purchase of any supplies for such hospital, unless the same are purchased by competitive bidding.

1913, c. 42, s. 4; 1917, c. 268.

7262. Vacancies filled. Vacancies in the board of trustees occasioned by removals, resignations, or otherwise shall be reported to the governing body of the

county, township, or town and be filled in like manner as original appointments, appointees to hold office until the next following general election, when such vacancies shall be filled by election in the usual manner.

1913, c. 42, s. 5; 1917, c. 268.

7263. Deposit and payment of funds. All money received for such hospital shall be deposited in the treasury of the county, township, or town to the credit of the hospital fund, and paid out only upon warrants drawn by the auditor, or other proper officer, of such county, township, or town upon the properly authenticated vouchers of the hospital board.

1913, c. 42, s. 4; 1917, c. 268.

7264. Regulations as to bond issue. Whenever any county, township, or town in this state shall have provided for the appointment and election of hospital trustees, and voted a tax for a term not exceeding twenty years for hospital purposes, as authorized by law, the county, township, or town may issue bonds in anticipation of the collection of such tax in such sums and amounts as the board of hospital trustees shall certify to the governing body of such county, township, or town to be necessary for the purposes contemplated by such tax, but such bonds in the aggregate shall not exceed the amount which might be realized by said tax, based on the amount which may be yielded on the property valuation of the year in which the tax is voted. Such bonds shall mature in twenty years from date and shall be in sums not less than one hundred dollars nor more than one thousand dollars, drawing interest at a rate not exceeding five per cent per annum, payable annually or semiannually; the bonds shall be payable at pleasure of county, township, or town after five years, and each of said bonds shall provide that it is subject to this condition, and shall not be sold for less than par, and shall be substantially in the form provided for county bonds, but subject to changes that will conform them to the provisions of this article, and be numbered consecutively and redeemable in the order of their issuance.

1913, c. 42, s. 6; 1917, c. 268.

7265. Condemnation of land. If the board of hospital trustees and the owners of any property desired by them for hospital purposes cannot agree as to the price to be paid therefor, they shall report the fact to the governing body of the county, township, or town, and condemnation proceedings shall be instituted by such governing body and prosecuted in the name of the county, township, or town wherein such public hospital is to be located, by the attorney for such county, township, or town, under the provisions of law for the condemnation of land for railroads.

1913, c. 42, s. 7; 1917, c. 268.

7266. Plans to be approved; advertisement for bids. No hospital buildings shall be erected or constructed until the plans and specifications have been made therefor and adopted by the board of hospital trustees, and bids advertised for according to law for other county buildings.

1913, c. 42, s. 8.

7267. Additional appropriation. In the counties, townships, or towns exercising the rights conferred by this article, the governing body may appropriate each

year, in addition to tax for hospital fund hereinbefore provided for, not exceeding five per cent of its general fund for the improvement and maintenance of any public hospital so established.

1913, c. 42, s. 10; 1917, c. 268.

7268. Power to accept donations. Any person, firm, corporation, or society desiring to make donations of money, personal property, or real estate for the benefit of such hospital shall have the right to vest title of the property so donated in said county, township, or town, to be controlled, when accepted, by the board of hospital trustees according to the terms of the deed, gift, devise, or bequest of such property.

1913, c. 42, s. 13; 1917, c. 268.

7269. Persons entitled to benefit of hospital. Every hospital established under this article shall be for the benefit of the inhabitants of such county, township, or town, and of any person falling sick or being injured or maimed within its limits; but every person who is not a pauper shall pay to such board of hospital trustees, or such officers as it shall designate, for such county public hospital, a reasonable compensation for occupancy, nursing, care, medicine, or attendance, according to the rules and regulations prescribed by the board, such hospital always being subject to such reasonable rules and regulations as the board may adopt, in order to render the use of the hospital of the greatest benefit to the greatest number. The board may exclude from the use of such hospital all persons who shall wilfully violate such rules and regulations; the board may extend the privileges and use of such hospital to persons residing outside of such county, township, or town, upon such terms and conditions as may be prescribed from time to time by its rules and regulations.

1913, c. 42, s. 11; 1917, c. 268.

7270. All persons subject to hospital regulations. When such hospital is established, the physicians, nurses, attendants, the persons sick therein, and all persons approaching or coming within the limits of same, and all furniture and other articles used or brought there, shall be subject to such rules and regulations as said board may prescribe.

1913, c. 42, s. 12.

7271. Municipal jurisdiction extended. The jurisdiction of the city, town, or village in or near which a public hospital is located shall extend over all lands used for hospital purposes outside the corporate limits, if so located, and all ordinances of such cities and towns shall be in full force and effect in and over the territory occupied by such public hospital.

1913, c. 42, s. 9.

7272. Equal privileges to all physicians. In the management of such public hospital no discrimination shall be made against practitioners of any school of medicine recognized by the laws of North Carolina, and all such legal practitioners shall have equal privileges in treating patients in such hospital. The patient shall have the absolute right to employ, at his own expense, his own physician, and the physician so employed shall have exclusive charge of the care and treatment of such patient in the hospital, and nurses therein shall, as to such patient,

be subject to the directions of such physician, subject always to such general rules and regulations as shall be established by the board of trustees under the provisions of this article.

1913, c. 42, s. 14.

7273. Training school for nurses. The board of trustees of such county, township, or town public hospital may establish and maintain, in connection therewith and as a part of said public hospital, a training school for nurses.

1913, c. 42, s. 15; 1917, c. 268.

7274. Room for examination of insane persons. The board of trustees shall at all times provide a suitable room for the detention and examination of all persons who are brought before the commissioners of insanity for such county, provided that such public hospital is located at the county-seat.

1913, c. 42, s. 16.

7275. Charity patients determined. The board of hospital trustees shall have the power to determine whether or not patients presented at the public hospital for treatment are subjects for charity, and shall fix the compensation to be paid by patients other than those unable to assist themselves.

1913, c. 42, s. 18.

7276. Department for tuberculous patients. The board of trustees are authorized to provide as a department of the public hospital, but not necessarily attached thereto, suitable accommodations and means for the care and treatment of persons suffering from tuberculosis, and to formulate such rules and regulations for the government of such persons, and for the protection from infection of other patients and of nurses and attendants in such public hospital, as they may deem necessary; and it shall be the duty of all persons in charge of or employed at such hospitals, or residents thereof, to faithfully obey and comply with all such rules and regulations. The board of hospital trustees shall, if practicable, employ as head nurse to be placed in charge of the public tuberculosis sanatorium one who has had experience in the management and care of tuberculous persons.

1913, c. 42, s. 17.

7277. Plans for county and municipal tubercular sanatoria. Any county or town desiring to erect a sanatorium or hospital, shack, tent, or other structure in which it is intended to keep persons suffering with tuberculosis shall first submit to the state board of health for its approval or rejection the plans of said sanatorium, hospital, shack, tent, or other structure, and it shall be unlawful for any county or town to begin the erection of any such structure referred to above without the consent or approval of the state board of health.

Any person, firm, or corporation failing, neglecting, or refusing to comply with the provisions of this part of this article shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, in the discretion of the court.

1917, c. 216, ss. 1, 2.

7278. Nonresident tuberculous patients. The governing body of any county, township, or town where no suitable provision has been made for the care of

indigent tuberculous residents may contract with the board of hospital trustees of any public hospital for the care of such persons in the sanatorium department of such hospital, upon such reasonable terms as may be agreed upon.

1913, c. 42, s. 19; 1917, c. 268.

Part 2. County Tuberculosis Hospitals

7279. Power to establish. Any county within the state shall have power and authority at any time to establish, erect, and maintain a hospital for the care and treatment of persons suffering with the disease known as tuberculosis, as hereinafter provided in this article.

1917, c. 99, s. 1.

7280. Election for bond issue; special tax. The board of county commissioners of any county in the state may, by majority vote of the board, or upon petition of one-fourth of the freeholders of the county shall, after thirty days notice at the courthouse door and publication in one or more newspapers published in the county, order an election to be held at the next general election, or order a special election to be held at such time as they may fix, to determine the will of the people of the county whether there shall be issued and sold bonds to an amount not to exceed one hundred thousand dollars, to bear interest at such rate as the board may fix and to be payable, both principal and interest, when and where they may decide. The proceeds of the bonds to be used in securing lands and erecting or altering buildings and equipping same, to be used as a hospital for the treatment of tuberculosis. If the majority of the qualified voters at said election shall vote in favor of the issuing of such bonds, then the bonds shall be issued and sold by the board and a special tax shall be levied to pay the interest and to provide a sinking fund to pay the bonds at maturity. The board of commissioners are also authorized to levy a special annual tax not to exceed five cents on the one hundred dollars valuation of property and fifteen cents on the poll to be used as a maintenance fund for the hospital for tuberculosis. The question of levying such special tax shall be submitted to the qualified voters of such county at an election to be held as hereinbefore provided.

1917, c. 99, s. 2; 1919, c. 159, s. 2.

7281. Manner of holding election. The county commissioners at the next general election or special election shall cause to be placed at each voting precinct in the county a ballot box marked "County Tuberculosis Hospital," and cause to be printed and distributed official ballots labeled "For County Tuberculosis Hospital," and official ballots labeled "Against County Tuberculosis Hospital," said election to be governed by the laws of the state. The county commissioners shall, if they propose to levy the tax for a maintenance fund as hereinbefore provided, also cause to be placed at each voting precinct in the county a ballot box marked "Maintenance of County Tuberculosis Hospital," and cause to be printed and distributed official ballots labeled "For Maintenance of County Tuberculosis Hospital," and official ballots labeled "Against Maintenance of County Tuberculosis Hospital," such election to be held as hereinbefore provided.

1917, c. 99, s. 3; 1919, c. 159, s. 3.

7282. Board of managers; term of office; compensation. For each hospital so established the board of county commissioners shall, by a majority vote, elect a board of managers consisting of five members, who shall hold office for the term of five years, unless sooner removed for cause by the board of county commissioners: Provided, that at the first election of a board of managers one member shall be elected for the term of one year, one member for the term of two years, one member for the term of three years, one member for the term of four years, and one member for the term of five years: Provided, also, that any vacancies in such board may be filled by the board of county commissioners for the unexpired term. In all counties having a health officer, such health officer shall, in addition to the five elected members, be *ex officio* a member of such board of managers. Women shall be eligible for election to such boards of managers. The compensation for such board shall be the same as that of the county commissioners.

1917, c. 99, s. 4.

7283. Powers of board; title to property. Authority in regard to the purchase of lands, erection and maintenance of buildings, selection of officers, employees, and attendants, formulation of rules and regulations for the admission and government of patients, and general conduct of the hospital, shall vest in the board of managers. No one related by blood or marriage to any member of the board of managers shall be appointed to any office or position in connection with the hospital, except by unanimous vote of the board of managers. All property, both real and personal, pertaining to such hospital, shall be vested in the county: Provided, however, that any donations, bequests, or devises made for the use of such hospital shall be held by the county in trust according to the terms of such donation, devise, or bequest.

1917, c. 99, s. 5.

7284. Contract power; regulations for admission. The board of county commissioners, or the board of managers, according to the authority vested in them by the board of county commissioners or by this article, shall have power and authority to purchase property, both real and personal, to make contracts, to formulate, change, and alter rules and regulations for the admission and government of patients, and to do all things reasonably incidental or necessary to carry out the true intent and purpose of this article. Patients may be admitted and kept without charge or for such compensation as may be deemed just and proper in each particular case: Provided, that no person who is not a bona fide resident of the county maintaining such hospital shall be kept for less than actual cost. The county commissioners of any county may, instead of erecting the institution in the county where the vote is taken, use a part or all of the funds in erecting and maintaining a building or buildings at the state sanatorium at Montrose, or the county commissioners may in their discretion erect and maintain a tuberculosis hospital in the county where the bonds are issued, and may also use part of the funds to erect and maintain a building or buildings at Montrose, as they may deem best. Before erecting any building or buildings at Montrose the county commissioners shall make due arrangements and enter into the necessary contract or contracts with the board having charge of the state sanatorium at Mont-

rose. And the board having in charge the state sanatorium at Montrose is hereby authorized and empowered to make contracts with any county in the state, specifying the terms upon which such building or buildings may be erected and making such arrangements as it may deem wise for the maintenance of such buildings and the care and support of such county patients. In case the county commissioners of any county or the people of any county do not decide to issue bonds for the erection of such hospital, but do decide to levy the special tax hereinbefore provided for, or the county commissioners of any county wish to use the necessary funds from the general fund of the county, they may in either case make arrangements with the board having in charge the state sanatorium at Montrose for the maintenance and care of tuberculous patients of such county.

1917, c. 99, s. 6; 1919, c. 159, s. 3.

NOTE.—Plans of buildings to be approved by state board of health, see under part 1 of this article, s. 7277. For state sanatorium for tuberculosis, see Public Health, ss. 7172-7179.

CHAPTER 120

PUBLIC PRINTING

ART. 1. REGULATION OF PUBLIC PRINTING.

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- 7297. Supreme court reports; number printed.
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- 7309. Creation and officials of department.
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ART. 1. REGULATION OF PUBLIC PRINTING

7285. Public printing defined. For the purposes of this chapter the term "Public Printing" shall be construed to mean all printing done directly for the state and paid for out of the general fund, and included in the following: All annual or biennial reports required to be made under laws that now or may hereafter exist, all blanks and blank books and office stationery required, and no more: Provided, that special bulletins and publications, except for divisions of the government supported by state appropriations, may be allowed by order of the printing commission.

1911, c. 211, s. 1.

7286. Printing commission. The governor, the council of state, the commissioner of labor and printing and the attorney-general shall constitute the printing commission.

1919, c. 314, s. 4.

7287. Contract for state printing and binding. The printing commission shall contract for having all printing and binding done for the state upon the best possible terms for the state; and the commissioner of labor and printing shall super-

intend the same. In any contract which they may make, they may fix and determine the times for the delivery of the public and private laws, and the journals and documents of the general assembly, or any part thereof, according to their judgment and discretion. The person with whom such contract is made is designated in this chapter as the public printer.

Rev., s. 5092; 1901, cc. 280, 401, 667; 1893, c. 161; 1917, c. 126.

Cases of interest: *Capital Printing Co. v. Hoey*, 124-767; *Worth v. Stewart*, 122-258, 263; *Stewart v. State*, 118-624.

7288. Bond of public printer. Any person to whom may be awarded the public printing and binding shall give bond, with approved surety, payable to the state of North Carolina, in the sum of five thousand dollars, conditioned for the faithful performance of his duties and undertakings under his contract. The surety herein required shall justify before some person authorized to administer oaths.

Rev., s. 292; Code, s. 3621; 1899, c. 250, s. 2.

Case involving printer's bond: *Worth v. Stewart*, 122-263.

7289. Public printer failing to perform contract; course pursued. If any person who has contracted to do the public printing for the state shall fail to perform his contract according to the terms thereof, the governor, council of state, attorney-general, and commissioner of labor and printing shall procure the public printing to be done by other parties, and the attorney-general shall institute suit in the superior court of Wake county in the name of the state to recover of the public printer and his bond any damages for failure to perform the contract.

Rev., s. 5094; 1899, c. 724; 1901, cc. 280, 401, 667.

7290. Work to be examined and approved; accounts audited. The commissioner of labor and printing, aided by the assistant commissioner, shall carefully examine all printing and binding done for the state, or any department thereof, by the public printer, and shall certify that the workmanship of the printing and binding is properly executed and that the accounts rendered by the public printer for the same are accurate and just before the auditor shall issue any warrant for the payment thereof. Such accounts shall not be approved by the commissioner nor audited by the state auditor oftener than forty-eight times in a year.

Rev., s. 5095; Code, ss. 3622, 3623; 1871-2, c. 180, s. 4; 1885, c. 331; 1899, c. 373, s. 5, c. 622.

See *Worth v. Stewart*, 122-258, 263.

Duty of commissioner of labor and printing to examine workmanship in printing supreme court reports: *In re Printing Supreme Court Reports*, 153-649.

7291. Paper and stationery for public printing. The commissioner of labor and printing shall purchase for the use of the state the paper and stationery used for public printing.

Rev., s. 5095.

7292. Binding of laws regulated. The public laws shall be bound separately. The public-local and private laws shall be bound together in one volume, or in two volumes, according to the size of such volumes, in the discretion of the printing commission. Some of the volumes shall be bound in sheep or buckram

and the residue in half-binding. The number to be bound in each shall be determined by the officials authorized by this chapter to contract for state printing and binding.

Rev., s. 5096; Code, s. 3633; 1893, c. 146; 1919, c. 314, s. 4.

7293. Size and style of state publications. The printing commission shall regulate the sizes of books and publications and the general style of publication, the style of type and the paper to be used, to the end that a uniform standard may be established for state publications.

1911, c. 211, s. 8.

7294. Reports and publications; conciseness. The reports and publications of every kind now authorized or required to be printed by the several state departments and state institutions shall be as compact and concise as is consistent with an intelligent understanding of the work of the department. The details of the work of the departments shall not be printed when not necessary to an intelligent understanding of the work of the departments, but totals and results shall be tabulated and printed in said reports. It shall be the duty of the governor and council of state, the attorney-general, and the commissioner of labor and printing to determine what details of the work of any department or state institution shall be printed. The details shall be kept on file and subject to the inspection of the public.

1911, c. 211, s. 2.

7295. Laws and resolutions; number printed. The printing commission shall have power to determine the number of public, public-local and private laws and the resolutions to be printed, not to exceed, however, the number provided in this chapter. Of the public laws there shall be printed eight thousand and five hundred copies, and of the public-local and private laws one thousand and fifty copies. All of which copies shall be delivered to the secretary of state.

Rev., s. 5097; Code, s. 3632; 1893, c. 146, s. 2; 1897, c. 135; 1901, c. 401, s. 2; 1919, c. 314, s. 4.

7296. Supreme court reports; contract for printing. The supreme court is authorized to contract from time to time for the printing of its reports, to select the printer for the same, and to prescribe such terms of the contract as will insure, under the supervision of the court, the prompt issue of the reports as soon as practicable after a sufficient number of opinions are filed: Provided, no contract shall be made for a longer period than two years, nor at a price higher than that paid the state printer for the same period: Provided further, that in letting said contract preference shall be given to printers of this state.

Rev., s. 5093; 1905, c. 400.

In re Printing Supreme Court Reports, 153-649.

7297. Supreme court reports; number printed. Of the supreme court reports there shall be printed and bound in full sheep or buckram as many copies, not less than seven hundred and fifty, as in the opinion of the attorney-general and secretary of state may be sufficient to supply the demand. All such copies shall be delivered to the secretary of state.

Rev., s. 5097; Code, s. 3632; 1893, c. 146, s. 2; 1897, c. 135; 1901, c. 401, s. 2; 1919, c. 314, s. 4.

7298. Journals; number printed and bound. Of each the senate and house journals there shall be printed four hundred and fifty copies in separate volumes, bound in sheep or buckram; all of which copies shall be delivered to the secretary of state.

Rev., s. 5099; Code, s. 3636; 1881, c. 16; 1872-3, c. 45, s. 10; 1919, c. 314, s. 4.

7299. Journals; preparation and filing by clerks of houses. It shall be the duty of the principal clerks of the two houses of the general assembly to hasten the preparation of their journals for the public printer, so that in no case at any time shall the journal of either house of any one day's proceedings remain unprepared for the printer by the clerk for a longer period than six days after its approval, and such clerks shall, immediately after the preparation of any and every day's proceedings of their respective houses, send the same to the office of the secretary of state.

Rev., s. 5100; Code, ss. 3627, 3628; 1872-3, c. 45, ss. 2, 3.

7300. Public documents. Of the reports of state officers, constituting a part of the public documents, the secretary of state shall be and is hereby required to file and keep in his office one copy of each, and the state librarian shall likewise be required to keep five copies of each, in the best binding in which any such report is issued; and these files shall take the place of these same reports as have heretofore been bound in the volumes known as the "Public Documents." The volumes known as the public documents shall contain only the reports of the various state institutions that are aided or sustained by special appropriations. Of these, there shall be bound not to exceed four hundred copies, one copy of which shall be furnished to each of the members and officers of the general assembly, and to the various state officers, and one copy to each of the state institutions, and one copy to the secretary of state, and five copies to the state librarian for filing. The remainder, if any, shall be delivered to the secretary of state.

Rev., s. 5101; 1911, c. 211, s. 7.

7301. Bills and legislative documents. The bills and all other documents ordered to be printed by either branch of the general assembly shall be printed in octavo form without a title page. But the first page shall be printed as follows: At the head of the page there shall be four rules, one double, two single, and one parallel, extending across the page. Between said rules shall be printed, first, the name of the house where the bill originated, with the year and date of the session, the name of the introducer, and the name of the printer; after leaving a space the width of two-line pica, a synopsis, or caption of the bill, or report of the committee, or whatever it may be, shall be set up with pica capitals. After such heading, the said document to follow immediately, commencing with a paragraph, allowing a space the width of small pica between the heading and commencement of the same.

Rev., s. 5102; Code, s. 3644; R. C., c. 93, s. 3.

7302. Departmental reports to legislature; number printed. Not to exceed eight hundred copies each of the annual or biennial reports of the several departments of the state government shall be printed, a copy of each of these to be furnished to each of the members and officers of the general assembly, one copy to each state officer, and five copies to the state librarian for filing, the remaining copies

to be distributed in the discretion of the officer making such report: Provided, that the printing commission may permit the publication of a greater number of reports if in their judgment the same are necessary.

1911, c. 211, s. 2.

7303. Reports and blanks for state offices. The governor, secretary of state, auditor, treasurer, superintendent of public instruction, attorney-general, insurance commissioner and adjutant general may have printed and prepared for their several offices such blank-books, blank forms, and other necessary printing as may be suitable and proper to enable them to discharge their official duties. They shall also be allowed all necessary postage, telephone, telegraph, postoffice box, and express charges; and the auditor and treasurer shall each have two hundred copies of their respective reports printed for the use of their offices. The printing herein authorized shall be done by the public printer according to the rates prescribed by law; and charges for all items shall be approved by the commissioner of labor and printing.

Rev., s. 5103; Code, s. 3646; 1873-4, c. 174; R. C., c. 93, s. 10; 1891, c. 352; 1919, c. 16.

7304. Agricultural department, printing for. The North Carolina agricultural experiment station is allowed to have the bulletins of the agricultural department printed as other state printing and paid for out of the general fund to an amount not to exceed two thousand five hundred dollars for each biennial period, the first biennial period ending on the first day of December, nineteen hundred and sixteen.

1915, c. 209.

7305. Department of public instruction, printing for. The department of the superintendent of public instruction is hereby allowed to expend for the necessary printing of its department a sum not to exceed eighteen thousand dollars for each biennial period, the first biennial period ending on the first day of December, nineteen hundred and sixteen.

1915, c. 209.

7306. State institutions, printing of reports of. The following institutions, and all others sustained by appropriations from the state treasury, are required to furnish to the commissioner of labor and printing, not later than December fifteenth of each biennial period, duplicates of the reports required to be furnished to the governor for his use and for the records of his office, for inclusion in the public documents; not to exceed two hundred copies of such reports may be furnished to the executive head of such institutions: The university of North Carolina, Chapel Hill; the North Carolina state college of agriculture and engineering, Raleigh; the North Carolina agricultural experiment station, Raleigh; the negro agricultural and technical college of North Carolina, Greensboro; the state school for the blind and the deaf, Raleigh; the Cullowhee normal and industrial school, Painter; the Appalachian training school, Boone; the North Carolina school for the deaf, Morganton; the central hospital, Raleigh; the state hospital, Morganton; the state hospital (colored), Goldsboro; the state prison, Raleigh; the East Carolina teachers' training school, Greenville; the state board of health, including the bureau of vital statistics, the state laboratory of hygiene, and the North Carolina sanatorium for the treatment

of tuberculosis, Sanatorium: Provided, that these reports shall carry only such matters as are essential to a proper understanding of the work and purposes of the institution, together with a financial statement covering the previous biennial period ending December first.

1915, c. 62, s. 5.

7307. Printer's duties during session of general assembly. It shall be the duty of the printer aforesaid, in person or by agent, to call on the secretary of state, or his chief clerk at the office of said secretary daily, within office hours, and apply for such certified copies of the acts and resolutions of said assembly, and for such proceedings of the two houses as have been filed by the clerks aforesaid in the office of said secretary; and these applications shall be continued daily by the public printer until all of the acts, resolutions, and proceedings aforesaid of the session have been received by him.

Rev., s. 5105; Code, s. 3629; 1872-3, c. 45, s. 4.

7308. How amount of printing for state departments settled. Whenever in the judgment of the commissioner of labor and printing any requisition received by him from any state officer or department goes beyond the intent of the laws allowing printing, he may decline to allow the expenditure required to cover the cost of printing or other similar matter required. The officer or department making the requisition shall have the right of appeal from the decision of the commissioner of labor and printing to the printing commission, whose decision shall be final. A full account of such appeal shall be filed with the joint committee on printing of the general assembly at the succeeding session.

1911, c. 211, s. 8; 1915, c. 61.

NOTE.—For the duties of secretary of state as to the printing and distribution of state publications, see State Officers, article Secretary of State.

ART. 2. DEPARTMENT OF LABOR AND PRINTING

7309. Creation and officials of department. A department of labor and printing is hereby created and established. The duties of the department shall be exercised and discharged by a commissioner, who shall be designated as commissioner of labor and printing, and an assistant commissioner, who shall be appointed by the commissioner, and who shall be a practical printer.

Rev., s. 3909; 1919, c. 314, s. 4.

7310. Commissioner and assistant commissioner. The commissioner shall be elected by the people in the same manner as is provided for the election of the secretary of state. His term of office shall be four years. The office of the department shall be kept in the city of Raleigh and same shall be provided for as are other public offices of the state. The assistant commissioner shall perform the duties of the commissioner in his absence from office or in case of a vacancy therein.

Rev., ss. 3909, 3910; 1919, c. 314, s. 4.

7311. Duties and powers of commissioner. The commissioner, aided by the assistant commissioner, shall collect and collate information and statistics concerning labor and its relation to capital, the hours of labor, the earnings of laborers and their educational, moral, and financial condition, and the best means of pro-

moting their mental and moral and material welfare; shall also collect and collate information and statistics concerning the various mining, milling, and manufacturing industries in this state, their location, capacity, and actual output of manufactured products, the kind and quantity of raw material annually used by them and the capital invested therein; shall also collect and collate information and statistics concerning the location, estimated and actual horse-power and condition of valuable water-powers, developed and undeveloped, in this state; also concerning farm lands and farming, the kinds, character, and quantity of the annual farm products in this state; also of timber lands and timbers, truck gardening, dairying, and such other information and statistics concerning the agricultural and industrial welfare of the citizens of this state as he may deem to be of interest and benefit to the public, and shall also perform the duties of mine inspector as prescribed in the chapter entitled Mines; and shall have the powers and perform the duties in relation to the public printing that are set forth in this chapter.

Rev., s. 3910; 1897, c. 251; 1899, c. 373, ss. 3, 4; 1899, c. 622 ss. 1, 2; 1901, c. 280, s. 2; 1901, c. 401, s. 2.

7312. Official reports. The commissioner shall annually publish a report, embodying therein such information and statistics as he may deem expedient and proper, which report shall be printed and paid for by the state just as the reports of other public officers are printed and paid for. The number of copies of such report to be printed to be designated by the commissioner. The distribution of the reports will be paid for from the general fund and not from the appropriation. The commissioner shall send or cause to be sent a copy of the report to every newspaper in this state and a copy to each member of the general assembly; a copy to each of the several state and county officers; a copy to each labor organization in the state, and a copy to any citizen who may apply for the same either in person or by mail, and he may also send a copy to such officers of other states and territories and to such corporations or individuals in other states and territories as may apply for the same or as he may think proper. He shall also make a full report to the governor as other state officers are required to do, embodying therein such recommendations as he may deem calculated to promote the efficiency of his department.

Rev., s. 3911; 1899, c. 373, s. 6.

NOTE.—For salaries of the commissioner and assistant commissioner, see Salaries and Fees, s. 3873.

CHAPTER 121

REFORMATORIES

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ART. 1. STONEWALL JACKSON MANUAL TRAINING AND INDUSTRIAL SCHOOL

7313. Incorporation. Mrs. May Anna Jackson, Maggie S. Burgwyn, Miss Easdale Shaw, Mrs. W. Faison, and eleven others, trustees or directors, and their successors, are hereby incorporated under the name and style of the Stonewall Jackson Manual Training and Industrial School, by which name they may sue and be sued, plead and be impleaded, hold, use, and sell and convey real estate, receive gifts and donations and appropriations, and do all other things necessary and requisite for the purposes of its organization as hereinafter specified.

1907, c. 509, s. 1; 1907, c. 955.

The act establishing the Stonewall Jackson training school is constitutional, and committing a child to this institution is not imprisonment as a punishment for crime: *In re Watson*, 157-340.

7314. Purpose of the school. The trustees are empowered to establish and operate a school for the training and moral and industrial development of the criminally delinquent children of the state; and when such school has been organized the trustees may, in their discretion, receive therein such delinquent and criminal children under the age of sixteen years as may be sent or committed thereto under any order or commitment by the judges of the superior courts, the judges of the juvenile courts, or the recorders or other presiding officers of the city or criminal courts, and shall have the sole right and authority to keep, restrain, and control them during their minority, or until such time as they shall deem proper for their discharge, under such proper and humane rules and regulations as may be adopted by the trustees. All laws and clauses of laws in conflict with this section are hereby repealed.

1907, c. 509, s. 2; 1907, c. 955, s. 1.

7315. Power to purchase land and locate school. The board of trustees shall select a suitable place outside of and away from any city, town, or village, for the location of such school, and they are empowered to purchase, at some suitable and convenient place in this state, not less than one hundred acres nor more than five hundred acres of land whereon to erect and operate such school.

1907, c. 509, ss. 2, 15.

7316. Election of trustees; vacancies; appropriation. The trustees herein named and the eleven other persons shall be divided into three classes:

- (1) Mrs. Jackson.....
To serve for six years.
- (2)
To serve for four years.
- (3)
To serve for two years.

At the expiration of the terms of office of each class of trustees, if the state shall at such time be appropriating to the support of the institution a sum of not less than five thousand dollars per annum, the governor shall have the right to fill by appointment two of the vacancies so occurring, and the board to fill the other three by election of such persons as they may see fit, and all vacancies in said board shall continue to be filled in the above manner; but in case the state

shall refuse to appropriate at least the aforesaid sum, then the state shall forfeit all rights to appoint any trustees or require any account of statements as herein provided, and said school shall then be governed by the general laws applicable to charitable institutions of like character not receiving state appropriations, and said board may fill all vacancies therein by election. If, however, the general assembly shall at its session of one thousand nine hundred and seven vote an appropriation to said school, then it shall be the duty of the governor to call, not later than the first day of September, one thousand nine hundred and seven, a meeting of the trustees herein named, at his office in Raleigh, and at such meeting the trustees shall proceed to the election of a treasurer, superintendent for the school, and such other officers for the board and school as they deem proper. The eleven other trustees not herein selected shall be selected in the following manner: If the general assembly shall make an appropriation to said school, the eleven other trustees shall be selected by the governor, by and with the advice of the four trustees herein named; but if the general assembly shall refuse to vote such appropriation, then the four trustees herein named shall have the power and right to select the eleven other trustees.

1907, c. 509, s. 6; 1907, c. 955, s. 2.

NOTE.—The appropriation was made 1907, c. 871, and has been continued by each session of the general assembly. 1909, c. 449, s. 16; 1911, c. 121, s. 10; 1913, c. 106, s. 8; 1915, c. 98, s. 6; 1917, c. 193, s. 7; 1919, c. 145, s. 7.

7317. Application of funds; account required. All moneys received by the trustees by private gifts, donations, or otherwise shall be expended in the establishment, operation, and maintenance of the school for the training and the moral and industrial development of such delinquent children, and in securing homes for them; and in case the trustees receive or are allowed any state aid for said school, it shall be their duty to duly account for all moneys so received by them and to make report of the manner of its expenditure and of the work done by them as hereinafter more particularly provided for.

1907, c. 509, s. 3.

7318. Trustees to employ superintendent and assistants, and make regulations. The board of trustees shall have the management and control of the school, and shall have authority to employ a superintendent and such other assistants as they may deem necessary; to fix their salaries, to define their duties, to discharge any employees, and to make any and all rules and regulations as they may deem necessary for the management and conducting of such reformatory under the provisions of this article, and not inconsistent therewith.

1907, c. 509, s. 8.

7319. Treasurer and superintendent to give bond. The treasurer and superintendent shall, before receiving any of said funds, make a good and sufficient bond, payable to the state of North Carolina, in such sums as may be named by the governor and approved by the state treasurer.

1907, c. 509, s. 7.

7320. Powers of superintendent. The superintendent employed by the board is authorized to require obedience from all the inmates of the school, and is intrusted

with the authority for correcting and punishing any inmate thereof to the same extent as a parent may under the law impose upon his own child, and the trustees shall have the right at any time to discharge the superintendent for cause.

1907, c. 509, s. 9.

7321. Governor to visit reformatory. It shall be the duty of the governor of the state to visit the reformatory at least once in each year, and oftener if he deem it necessary, and to make such suggestions to the board of trustees as he may deem wise and for the best interests of the school or reformatory.

1907, c. 509, s. 10.

7322. Courts may commit offenders to reformatory. The judges of the superior courts, recorders, or other presiding officers of the city or criminal courts of this state, shall have authority, and it shall be their duty, to sentence to the school all persons under the age of sixteen years convicted in any court of this state of any violation of the criminal laws: Provided, that such judge or other of said officers shall be of the opinion that it would be best for such person, and the community in which he may be convicted, that he should be so sentenced. Any commitment under this article, whether by judge or court, as hereinbefore provided, shall be full, sufficient, and competent authority to the officers and agents of the school for the detention and keeping therein of the child so committed.

1907, c. 509, ss. 11, 17; 1907, c. 955, s. 1.

NOTE.—See juvenile courts, art. 2, chapter Child Welfare.

Committing a child to this institution is not imprisonment as a punishment for crime: In re Watson, 157-340. See section 5047.

7323. Governor may transfer prisoners to reformatory. The governor of the state may by order transfer any person under the age of sixteen years from any jail, chain-gang, or penitentiary in this state to such reformatory.

1907, c. 509, s. 12.

7324. Department first established; sexes separated. The board of trustees shall first establish and maintain such departments of the manual training school as shall be adapted to the use of such class of boys as in the discretion of the board may be most in need of such care and training and will probably be most benefited thereby. When both sexes are admitted, the males and females shall be kept in separate apartments or buildings.

1907, c. 509, ss. 17, 18.

7325. Industrial training provided. There shall be established and conducted on such lands as may be owned in connection with the school such agriculture, horticulture, workshops, and other pursuits as the board of trustees may deem expedient so as to keep regularly at work all able-bodied inmates.

1907, c. 509, s. 4.

7326. General instruction and training given. The officers of the school shall receive and take into it all children committed thereto by competent authority, or received therein as aforesaid, and shall cause all such children in the school to be instructed in such rudimentary branches of useful knowledge as may be suited to their various ages and capacities. The children shall be taught such useful trades and given such manual training as the board may direct, and shall

perform such manual labor as the principal or other superintending officers, subject to the direction of the board, may order. All the inmates shall, if possible, be taught the precepts of the Holy Bible, good moral conduct, how to work and to be industrious.

1907, c. 509, ss. 5, 14.

7327. Ungovernable inmates removed. If it shall appear to the board of trustees that any inmate of the school is or becomes ungovernable and is exerting an unwholesome influence over any other inmate, it shall be their duty to certify the same to the governor of the state, and he may order such inmate to the state's prison or to the jail or chain-gang in the county in which such inmate was convicted, where such person shall serve out his unexpired term.

1907, c. 509, s. 13.

7328. General legislative control. Nothing contained in this article shall be construed to prevent the general assembly from altering, changing, and modifying the law and regulations governing such school and its officers and directors in such manner and at such time as to it may seem best.

1907, c. 509, s. 19.

NOTE.—A similar institution for the negro criminal youth was authorized by law, to be known as the Foulks Reformatory and Manual Training School, with the same powers and subject to the same conditions as to appropriations, but no appropriation was made. 1909, c. 817.

ART. 2. STATE HOME AND INDUSTRIAL SCHOOL FOR GIRLS AND WOMEN

7329. Incorporation and name. A corporation to be known and designated as the State Home and Industrial School for Girls and Women is hereby created, and as such corporation it is authorized and empowered to accept and use donations and appropriations and to do all other things necessary and requisite to be done in furtherance of the purpose of its organization and existence as hereinafter set forth.

1917, c. 255, s. 1.

7330. Board of managers; term of office; compensation. The institution shall be under the control and management of a board of five managers, three of whom shall be women and two shall be men. All of the managers shall be appointed by the governor of the state, who in the first appointment shall appoint one of the managers for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years; and at the end of the term of any manager the governor shall appoint the successor for a term of five years. All vacancies on the board, occurring for any cause, shall be filled by the governor. Each member of the board shall be entitled to receive necessary expenses for every day engaged in the business of the institution.

1917, c. 255, s. 2.

7331. Power to purchase land and erect buildings. The board of managers is authorized to secure by gift or purchase suitable real estate within the state, not less than fifty acres, at such place as the board may deem best, and with the money or other property which the corporation may have received for that pur-

pose, either by donations from individuals or by appropriation from the state, the board shall proceed to erect on such real estate buildings suitable for carrying out the purposes for which the corporation is created.

1917, c. 255, s. 3.

7332. Power of control. The board of managers shall have the general superintendence, management, and control of the institution; of the grounds and buildings, officers, and employees thereof; of the inmates therein and all matters relating to the government, discipline, contracts, and fiscal concerns thereof; and may make such rules and regulations as may seem to them necessary for carrying out the purposes of the institution. And the board shall have the right to keep, restrain, and control the inmates of the institution until such time as the board may deem proper for their discharge under such proper and humane rules and regulations as the board may adopt. The board shall endeavor as far as possible to classify the inmates and keep the different classes in separate wards or divisions, so as to produce the best results in the reformatory work. The board of managers shall constitute a board of parole of the institution and shall have power to parole and discharge the inmates under such rules and regulations as the board may prescribe.

1917, c. 255, s. 4.

7333. Appointment of officers; compensation; by-laws. The board of managers shall appoint from among its members a president, a secretary, and a treasurer, who shall hold office for one year from the date of appointment; and if the board deem it proper to do so, the office of secretary and treasurer may be combined in one. The board shall also appoint a superintendent, who shall be a woman of experience and training. The board shall fix the compensation of the superintendent and all officers and employees of the institution, and shall prescribe the duties of each. The board shall further adopt such by-laws as, in the judgment of the board, may be necessary, fixing the time and place of the meetings of the board and making such other provisions as may be necessary for the proper management of the institution.

1917, c. 255, s. 5.

7334. Persons committed to the reformatory; time of detention. Any girl or woman who may come or be brought before any court of the state, and may either have confessed herself guilty or have been convicted of being a habitual drunkard, or being a prostitute, or of frequenting disorderly houses or houses of prostitution, or of vagrancy, or of any other misdemeanor, may be committed by such court for confinement in the institution aforesaid: Provided, such person is not insane or mentally or physically incapable of being substantially benefited by the discipline of such institution: and Provided further, that before sentencing such person to confinement in the institution the court shall ascertain whether the institution is in position to care for such person; and it shall be at all times within the discretion of the board of directors as to whether the board will receive any person in the institution. No commitment shall be for any definite term, but any person so committed may be paroled or discharged at any time after her commitment by the board of managers, but no inmate shall in any case be detained longer than three years. When any such person shall come before any court for the purpose of confessing guilt or for trial, the court shall, as far

as feasible and as far as consistent with public policy, give a private hearing, and in all respects avoid unnecessary publicity in connection with the proceedings before the court.

1917, c. 255, ss. 6, 12.

7335. Delivery of inmates to institution; expenses. It shall be the duty of the county authorities of the county from which any girl or woman is sent to the home, or the city authorities, if any girl or woman is ordered to be sent to the home by any city court, to see that such girl or woman is safely and duly delivered to the home, and to pay all the expenses incident to her conveyance and delivery to the home.

1919, c. 122.

7336. Voluntary application for admission; care of children. In addition to caring for such persons as may be committed to the institution by order of court, the board of managers may, in their discretion, receive into the institution any such person who may have in writing confessed herself guilty of any offense or any wayward conduct and may in writing express her desire to become an inmate of the institution; but the board shall not admit any such person unless upon examination of such person, freely and voluntarily held under the direction of the board, the board shall conclude that confinement in the institution will probably aid in the reformation of such person. Any person becoming an inmate of the institution under the provisions of this section shall be subject to the same rules and regulations as those who have been committed by order of court, and shall be detained for such time as the board, in its judgment, may deem best, not exceeding, however, the term of three years. And it shall further be the duty of the board of managers to make suitable provision for the care and maintenance of children born in the institution, and also of the infant children that any woman may have when she is committed to the institution.

1917, c. 255, s. 7.

7337. Law as to juvenile delinquents applied. The provisions of the chapter pertaining to the reclamation and training of juvenile delinquents shall apply to young girls, and any court before whom a young girl is brought pursuant to the provisions of said chapter may be by order of court placed in the institution herein established, and shall be subject to all the provisions of law relating thereto: Provided, however, that no girl shall be admitted to the institution under this provision without the previous consent of the board of managers.

1917, c. 255, s. 8.

See Child Welfare, chapter 90.

7338. Discharge on parole; arrest for escape or violation of parole. The board of managers may conditionally discharge any person at any time, and if any such person shall violate any condition of her parole or shall violate any condition upon which she has been discharged, or if any inmate escape from the institution, the board of managers may cause any such person to be rearrested and returned to the institution and be detained therein for the unexpired portion of her term, dating from the time of her parole, conditional discharge, or escape. The board of managers is empowered to issue to any person designated by the board a commitment signed by the president and attested by the secretary, and having attached thereto the common seal of the corporation, by the terms of which com-

mitment such person may be authorized and empowered to apprehend any such person who may have violated her parole or any condition of her discharge or that may have escaped, and carry such person back to the institution. Such commitment shall briefly state the reason for the issuance of the same, and the person designated to execute the same may execute it in any county of the state.

1917, c. 255, s. 9.

7339. Industrial training; compensation; power to detain. The board of managers is authorized and empowered to establish and maintain within the institution an industrial school, and shall provide for the safe-keeping and employment of the inmates for the purpose of teaching each of them a useful trade or profession and improving her mental and moral condition. If the board of managers sees fit, they may pay each inmate reasonable compensation for labor performed, after deducting such sum as they may deem reasonable for necessary expenses of her maintenance and discipline. To secure the safe-keeping, obedience, and good order of the inmates, the superintendent shall have the same power as to such inmates as keepers of jails and other penal institutions possess as to persons committed to their custody.

1917, c. 255, s. 10.

7340. Bond issue authorized. For the purpose of purchasing land and erecting buildings for a state home and industrial school for girls and women, the state treasurer is hereby authorized and directed to issue bonds of the state of North Carolina, payable ten years after the first day of July, one thousand nine hundred and seventeen, to an amount not to exceed the sum of twenty-five thousand dollars.

1917, c. 265, s. 1.

7341. Rate of interest on bonds. All of such bonds shall bear interest at a rate not exceeding four per cent per annum from the first day of July, one thousand nine hundred and seventeen, until paid, which interest shall be payable semi-annually on the first days of January and July of each year, so long as any portion of the bonds shall remain due and unpaid.

1917, c. 265, s. 2.

7342. Manner of issue and sale of bonds. The bonds authorized and directed to be issued by the preceding sections shall be coupon bonds of the denomination of five hundred dollars and one thousand dollars each, as may be determined by the state treasurer, and shall be signed by the governor and state treasurer and sealed with the great seal of the state. The coupons thereon may be signed by the state treasurer alone or may have a facsimile of his signature printed, engraved, or lithographed thereon, and the bonds shall in all other respects be in such form as the state treasurer may direct; and the coupons thereon shall, after maturity, be receivable in payment of all taxes, debts, dues, licenses, fines, and demands due the state of North Carolina of any kind whatsoever, which shall be expressed on the face of the bonds. Before selling the bonds herein authorized to be issued, the treasurer shall authorize the sale and invite sealed bids in such manner as in his judgment may seem to be most effectual to secure the best price. He is authorized to accept bids for the entire issue or of any portion thereof, and

where the conditions are equal he shall give the preference of purchase to the citizens of North Carolina; and he is authorized to sell the bonds herein authorized in such manner as in his judgment will produce the best price.

1917, c. 265, s. 3.

7343. Bonds exempt from taxation; investment for fiduciaries. The bonds and coupons shall be exempt from all state, county, or municipal taxation or assessment, direct or indirect, general or special, whether imposed for purposes of general revenue or otherwise, and the interest paid thereon shall not be subject to taxation as for income, nor shall the bonds and coupons be subject to taxation when constituting a part of the surplus of any bank, trust company, or other corporation. It shall be lawful for all executors, administrators, guardians, and fiduciaries generally to invest in said bonds.

1917, c. 265, ss. 4, 5.

ART. 3. REFORMATORIES OR HOMES FOR FALLEN WOMEN

7344. Counties and cities authorized to establish reformatories. In all cities that have a population of over twenty thousand people the governing body of such city and the board of county commissioners of the county in which the city is situated are authorized and empowered to establish jointly a reformatory or home for fallen women.

1917, c. 264, s. 1.

7345. Power to purchase land, erect buildings, and maintain the institution. The said city and county are authorized jointly to purchase a tract of land, not exceeding one hundred acres, for the use of such reformatory or home, the title to which shall be vested jointly in the city and county, and the reformatory shall be managed jointly by such city and county. The city and county are authorized to build such buildings and improvements on the land so purchased, to keep and maintain such reformatory or home for fallen women, and to make all necessary appropriations for buildings and keeping and caring for the inmates thereof: Provided, however, the cost of said buildings shall not exceed the sum of twenty thousand dollars, and the maintenance and upkeep and operating expenses per annum shall not exceed the sum of ten thousand dollars.

1917, c. 264, s. 1; 1919, c. 33.

7346. Board of directors elected; officers; regulations. The governing body of the city, at its annual election of officers for the city in May, shall elect for the term of two years two men as directors for such institution, and the board of county commissioners shall, in the same year, at their meeting in May, elect two men as directors for such institution to serve for two years. The mayor of the city and the chairman of the board of county commissioners shall be ex officio members of such board with equal right to vote, and the six directors shall have entire management and control of such reformatory for fallen women. The board shall elect one of their number president, and also elect a secretary and treasurer, and they shall have and exercise the usual powers incident to such officers. They shall make such rules and regulations as they see fit for the govern-

ment and management of such institution. The directors shall take an oath to perform their service faithfully, and they shall continue as directors until their successors are duly elected and qualified.

1917, c. 264, s. 1.

7347. Advisory board of women. The directors are authorized to appoint as an advisory board not more than twenty-five nor less than twelve discreet women to supervise and attend to the actual running of such institution. The advisory board of women shall be appointed for such term, not exceeding four years, as the directors may in their discretion think best.

1917, c. 264, s. 1.

7348. Special tax authorized. To assist in carrying out the provisions of this article the county commissioners and governing body of the city shall each levy annually a tax not exceeding two cents on each one hundred dollars valuation of real and personal property in such city and county respectively. The tax shall be levied and collected in the same manner as the other county and city taxes are collected. This fund shall be used exclusively for the purposes contemplated and set forth in this article, and shall be kept separate from all other funds.

1917, c. 264, s. 2.

7349. Employment of superintendent and assistants; rules and regulations. The board of directors shall have the management and control of the institution and shall have authority to employ superintendents and such other assistants as they may deem necessary; to fix their salaries, to define their duties, and to discharge any employee; and to make any and all rules and regulations as they may deem necessary for the management and conducting of the institution under the provisions of this article and not inconsistent therewith.

1917, c. 264, s. 5.

7350. Power of superintendent. The superintendent of the institution employed by the board of directors shall have the right to require obedience from all the inmates of the institution, and to use such lawful measures as may be necessary to enforce the same to the same extent as the superintendent of any other penal institution in this state is empowered in like case.

1917, c. 264, s. 6.

7351. Physician employed. For the purpose of treating the inmates of the institution for the whiskey, drug, or other habit or disease, the directors shall employ a competent physician or physicians to attend and treat said inmates.

1917, c. 264, s. 14.

7352. Purpose of home; persons to be admitted. The reformatory or home shall be conducted for the correction of fallen women, and for the moral and industrial training of criminally delinquent women and girls, by teaching them useful trades and domestic science, etc.; and the directors may, in their discretion, receive into the institution such women or girls as shall be committed thereto by the judge or other presiding officer of any superior or recorder's court held anywhere in the state of North Carolina within that judicial district in which county

the reformatory is now or may hereafter be situated, as hereinafter provided: Provided, that the reasonable cost of maintaining any woman or girl committed to such institution from any county other than that in which such reformatory shall be located shall be borne by the county from which such person shall have been committed.

1917, c. 264, s. 3.

7353. Right of directors to control inmates. The board of directors shall have the sole right to keep, restrain, and control the persons committed or otherwise received into the institution as hereinafter provided, during the term of their commitment thereto, under such proper and humane rules and regulations as may be adopted by the directors.

1917, c. 264, s. 4.

7354. Power of courts to commit persons to reformatory. When the institution is ready to receive and care for inmates, the board of directors shall notify the clerks of the courts hereinbefore specified; and the judges or other presiding officers of the superior, recorders', county, or other courts having like criminal jurisdiction, in that judicial district in which the reformatory is now or may hereafter be situated and established, shall have authority to sentence to the reformatory for fallen women for a term of not less than thirty days nor more than one year all those women who are convicted in their several courts of drunkenness or the drug habit, where it appears that they are habitual drunkards or drug fiends; and the judges or other presiding officers of such courts shall have authority to sentence to the "Reformatory for Women" for a term of not less than thirty days nor more than three years all female persons convicted in the said courts of any violation of the criminal laws of this state prohibiting and punishing fornication and adultery, keeping a house of ill-fame, or a bawdy-house, or disorderly house, or violating the criminal laws of this state as to chastity or vagrancy: Provided, that such judge or other presiding officer as aforesaid shall be of the opinion that it would be best for such persons and the community in which such persons may be convicted hereunder. The order of commitment of such judge or other presiding officer as hereinbefore provided shall be full, sufficient, and competent authority to the officers and agents of the institution for the detention and keeping therein of the persons so committed: Provided, that nothing herein shall authorize a justice of the peace to impose a sentence of longer than thirty days: Provided further, that judges and recorders holding courts in counties other than that in which the reformatory is located shall have power to commit such persons to the institution on the conditions heretofore set forth in this article.

1917, c. 264, s. 7; 1919, c. 302.

7355. Clerk of superior court may commit in certain cases. The clerk of the superior court shall have power and authority to commit to the institution for treatment any female person found by such clerk to be a habitual drunkard or habitually addicted to the drug habit, as such clerk is now authorized by law to commit to the hospital for the insane, private hospital, persons adjudged to be of unsound mind, and to that end such clerk of the court shall have all the power and authority conferred upon him by law with reference to insane persons.

1917, c. 264, s. 15.

7356. Voluntary application for admission. Any person fulfilling the requirements as to sex and age as hereinbefore provided may, upon written application to the directors, setting forth that the applicant wishes to reform and the term for which such applicant wishes to be detained, be admitted to such institution, in the discretion of the board of directors; and any inmate so admitted shall be subject to the same restraint, control, and treatment as persons committed thereto, and such applications signed by the applicants shall be full and sufficient authority for the detention and control of the applicants in the institution for and during the full term as set out in the application: Provided, that the directors may, in their discretion, discharge any inmate so admitted at any time.

1917, c. 264, s. 8.

7357. Instruction and training to be given. The officers of the institution shall take into the reformatory or home all persons committed thereto by competent authority, and shall cause all such persons to be instructed in such rudimentary branches of useful knowledge as may be suited to their various ages and capacities, and to be taught such useful trades and occupations as the board may direct; and such persons shall perform such labor as the principal and other superintending officers may order, subject to the discretion of the board of directors. All inmates of the institution shall, if possible, be taught the precepts of the Holy Bible, good moral conduct, how to work and be industrious.

1917, c. 264, s. 11.

7358. Industrial training; assistance to discharged inmates. There shall be established and conducted on such lands as may be owned in connection with the institution such useful pursuits as the board of directors may deem expedient, so as to keep regularly at work all able-bodied inmates thereof, and as far as may be practicable the board of directors shall assist the inmates, when paroled or discharged, in procuring suitable homes and honorable and respectable employment.

1917, c. 264, s. 12.

7359. Discharge on parole; rearrest for escape or violation of parole. The board of directors of the institution may detain therein, under the rules and regulations adopted by them, any person legally committed thereto, according to the terms of sentence and commitment; and with the approval and concurrence of the governor of the state first had and obtained, may conditionally parole or discharge such person at any time prior to the expiration of the term of commitment. If, however, any inmate shall escape or be conditionally paroled, or be conditionally discharged from the institution as aforesaid, and violate and break the condition of her parole or conditional discharge, the board of directors may, by and through their superintendent, cause her to be arrested and returned to the institution, to be detained therein for the unexpired portion of the commitment, dating from the time of escape or parole or conditional discharge. The superintendent of the institution, or any employee thereof under his control and direction, may rearrest, without a warrant, any inmate of the institution who may have escaped therefrom, in any county of this state, and shall forthwith convey her back to the institution from which she escaped; and a justice of the peace or any judicial officer may cause an escaped inmate from the institution to be rearrested

and held in custody until she can be returned to the institution as in case of the first commitment thereto. Any person conditionally paroled or conditionally discharged from the institution may be also rearrested and returned thereto upon a warrant issued by the chairman of the board of directors, the warrant specifying briefly the reason for such rearrest and return, and such warrant of rearrest shall be directed and delivered to a person employed by the board of directors, and may be executed by such person in any county of this state where the paroled or conditionally discharged inmate may be found.

1917, c. 264, s. 13.

7360. Ungovernable inmates removed. If it shall appear to the board of directors that any inmate of the institution is or becomes ungovernable, or is exerting an unwholesome influence over any other inmate of the institution, it shall be their duty to certify the same to the governor of the state, and he thereupon may order such inmate to the state's prison or to the county jail or to the workhouse in the county in which the inmate was convicted and sentenced, where such person shall serve out her unexpired term of imprisonment.

1917, c. 264, s. 10.

7361. Reports to be made by directors; inspection by grand jury. The board of directors shall at least once a year file with the city and the board of county commissioners of the county in which the institution is situated a full detailed report of the institution, together with the superintendent's reports thereon. It shall be the duty of the grand jury to personally visit and inspect such institutions once every six months, and report to the court the conditions prevailing therein.

1917, c. 264, s. 9.

7362. General legislative control. Nothing in this article shall prevent the general assembly from altering, changing, and modifying the laws and regulations governing such institutions, and their officers and directors, in such manner and at such time as it may deem best.

1917, c. 264, s. 16.

CHAPTER 122

RIVERS AND CREEKS

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ART. 1. COMMISSIONERS FOR OPENING AND CLEARING STREAMS

7363. County commissioners to appoint commissioners. Where any inland river or stream runs through the county, or is a line of their county, the boards of commissioners of the several counties may appoint commissioners to view such river or stream, and make out a scale of the expense of labor with which the opening and clearing thereof will be attended; and if the same is deemed within the ability of the county, and to be expedient, they may appoint and authorize the commissioners to proceed in the most expeditious manner in opening and clearing the same, by taking such lands from the public roads as the board of county commissioners shall permit and direct to be allotted to such work; which lands shall be placed under overseers in companies, every overseer and company to have a distinct portion of such river or stream to be laid off by the board of commissioners.

Rev., s. 5297; Code, s. 3706; 1887, c. 370.

See *Gwaltney v. Timber Co.*, 111-564.

7364. Overseers; appointment and duty. Every overseer shall be appointed by the board of county commissioners; and the clerk shall issue a notice, expressing therein the name of the stream, the distance he is to work thereon, and the hands appointed under him, and the sheriff shall serve the same upon him, under the same rules as notices are served upon overseers of roads. The overseer and hands, upon receiving three days previous notice from the commissioners, shall proceed to work upon and clear out such river or stream, subject to the same rules and double the penalties imposed upon overseers and hands working upon public roads; and no overseer or hands appointed to open and clear out navigable rivers and streams shall be compelled to work on public roads. And the board of county commissioners thereafter shall annually appoint overseers, and assign such hands as they may judge proper, to work on rivers and creeks, and keep in repair any

slopes erected or to be erected; and such overseers, and the hands assigned, for a failure of duty shall be subject to all the penalties imposed upon overseers of roads and the hands liable to work thereon.

Rev., s. 5298; Code, s. 3707; R. C., c. 100, s. 2; 1784, c. 227, s. 16; 1796, c. 460, s. 2; 1809, c. 782, s. 3; 1812, c. 845, ss. 1, 2, 3; 1813, c. 859, ss. 1, 2; 1844, c. 66.

See *Hutton v. Webb*, 124-757.

7365. Flats and appurtenances procured. The board of county commissioners appointing the commissioners may direct them to purchase or hire a flat with a windlass and the appurtenances necessary to remove loose rock and other things, which may by such means be more easily removed, and allow the same to be paid for out of the county funds.

Rev., s. 5299; Code, s. 3708; R. C., c. 100, s. 3; 1785, c. 242, s. 2.

7366. Neuse river in certain counties. The boards of commissioners of the counties of Johnston, Wayne, Lenoir, and Craven, at the first meeting which shall be held for their respective counties after the first day of July, may yearly appoint and lay off, in convenient districts, all the inhabitants of their counties, respectively, resident above Spring Garden on both sides of Neuse river, within such distances of the river as the boards of county commissioners shall appoint; and for each district appoint some person as overseer, who shall cause all persons within the district allotted to him, liable to work on public roads, to work at least six days in every year on the river, unless the boards of county commissioners shall otherwise direct; during which time he shall cause them to be employed in removing all logs, brush, and other obstructions to navigation; and for neglect he shall be guilty of a misdemeanor; and every person liable to work as aforesaid, or send hands, who shall fail when warned (as hands are for working on roads) to appear and work, with such tools as the overseer shall direct, shall pay for each day one dollar, to be recovered and applied in the same manner as fines for failing to work on public roads: Provided, that nothing in this section shall abridge or interfere with the rights and privileges of the Neuse river navigation company.

Rev., s. 5300; Code, s. 3709; R. C., c. 100, s. 4; 1823, c. 1197.

7367. Laid off in districts; passage for fish. The board of county commissioners may appoint commissioners to examine and lay off the rivers and creeks in their county; and where the stream is a boundary between two counties, may lay off the same on their side; in doing so they shall allow three-fourths for the owners of the streams for erecting slopes, dams and stands; and one-fourth part, including the deepest part, they shall leave open for the passage of fish, marking and designating the same in the best manner they can; and if mills are built across such stream, and slopes may be necessary, the commissioners shall lay off such slopes, and determine the length of time they shall be kept open; and such commissioners shall return to their respective boards of county commissioners a plan of such slopes, dams, and other parts of streams viewed and surveyed.

Rev., s. 5301; Code, s. 3710; R. C., c. 100, s. 5; 1787, c. 272, s. 1.

See *McLaughlin v. Mfg. Co.*, 103-103; *Gwaltney v. Timber Co.*, 111-564; *Hutton v. Webb*, 124-757.

7368. Commissioners to examine streams. The commissioners appointed by the board of county commissioners to examine and lay off the rivers and creeks within

the county, or where the stream is a boundary between counties, shall have power to lay off gates, with slopes attached thereto, upon any milldam built across such stream, of such dimensions and construction as shall be sufficient for the convenient passage of floating logs and other timber, in cases where it may be deemed necessary by the said board of county commissioners; and they shall return to the board of county commissioners appointing them a plan of such gates, slopes, and dams in writing.

Rev., s. 5302; Code, s. 3712; 1858-9, c. 26, s. 1.

See *McLaughlin v. Mfg. Co.*, 103-103; *Gwaltney v. Timber Co.*, 111-564; *Comrs. v. Lumber Co.*, 116-743.

7369. Report made and confirmed. Upon the confirmation of the report made by the commissioners, and notice thereof given to the owner or keeper of said mill, it shall be his duty forthwith to construct, and thereafter to keep and maintain, at his expense, such gate and slope, for the use of persons floating logs and other timber as aforesaid, so long as said dam shall be kept up, or until otherwise ordered by the board of county commissioners.

Rev., s. 5303; Code, s. 3713; 1858-9, c. 26, s. 2.

7370. Gates and dams discontinued. The commissioners at any time thereafter, appointed as aforesaid, when they may deem such gate and slope no longer necessary, may report the fact to their respective boards of county commissioners, and said boards of county commissioners may order the same to be discontinued.

Rev., s. 5304; Code, s. 3714; 1858-9, c. 26, s. 3.

7371. Failure of owner of dam to keep gates, etc. If any owner or keeper of a mill, whose dam is across any stream, shall fail to build a gate and slope therein, or thereafter to keep and maintain the same as required by commissioners to lay off rivers and creeks, he shall be guilty of a misdemeanor.

Rev., s. 3383; Code, s. 3715; 1858-9, c. 26, s. 4.

7372. Repairing breaks. Wherever any stream of water which is used to propel machinery shall be by freshet or otherwise diverted from its usual channel so as to impair its power as used by any person, such person shall have power to repair the banks of such stream at the place where the break occurs, so as to cause the stream to return to its former channel.

Rev., s. 5305; Code, s. 3716; 1879, c. 53, s. 1.

7373. Entry upon lands of another to make repairs. In case the break occurs on the lands of a different person from the one utilizing the stream, the person utilizing the stream shall have power to enter upon the lands of such other person to repair the same, and in case such person objects, the clerk of the superior court of the county in which the break occurs shall, upon application of the party utilizing the stream, appoint three disinterested freeholders, neither of whom shall be related to either party, who after being duly sworn shall lay off a road if necessary by which said person may pass over the lands of such other person to the break and repair said break from time to time as often as may be necessary, so as to cause the stream to return to its original channel, and assess any damage which may thereby be occasioned: Provided, the party upon whose land the work is proposed to be done shall have five days notice in writing served on him

or left at his place of residence: Provided further, that it shall be the duty of said commissioners to assess the damages of any one on whose land the road shall be laid off to be paid by the applicant for said road: Provided, also, that either party shall have the right of appeal to the superior court.

Rev., s. 5306; Code, s. 3717; 1879, c. 53, s. 2.

7374. Draws in bridges. Whenever the navigation of any river or creek which, in the strict construction of law, might not be considered a navigable stream, shall be obstructed by any bridge across said stream, it shall be lawful for any person owning any boat plying on said stream to make a draw in such bridge sufficient for the passage of such boat; and the party owning such boat shall construct and maintain such draw at his own expense, and shall use the same in such manner as to delay travel as little as possible.

Rev., s. 5307; Code, s. 3719; 1879, c. 279, ss. 1, 2.

See *Staton v. Wimberly*, 122-110.

7375. Public landings. The board of county commissioners may establish public landings on any navigable stream or water-course in the same manner that public roads are laid out and established. The board of county commissioners, on any petition for a public landing, shall order how the costs shall be paid. All places heretofore established as public landings shall remain such.

Rev., s. 5308; Code, s. 2982.

ART. 2. OBSTRUCTIONS IN STREAMS

7376. Obstructing passage of boats. If any person shall obstruct the free passage of boats along any river or creek, by felling trees, or by any other means whatever, he shall be guilty of a misdemeanor.

Rev., s. 3561; Code, s. 3711; R. C., c. 100, s. 6; 1796, c. 460, s. 2.

Section cited in *Hutton v. Webb*, 124-757. Compare section 7377; *State v. Pool*, 74-402.

7377. Obstructing streams a misdemeanor. If any person shall wilfully fell any tree, or wilfully put any obstruction, except for the purposes of utilizing water as a motive power, in any branch, creek, or other natural passage for water, whereby the natural flow of water through such passage is lessened or retarded, and whereby the navigation of such stream by any raft or flat may be impeded, delayed, or prevented, the person so offending shall be guilty of a misdemeanor, and fined not to exceed fifty dollars, or imprisoned not to exceed thirty days. Nothing in this section shall prevent the erection of fishdams or hedges which do not extend across more than two-thirds of the width of any stream where erected, but if extending over more than two-thirds of the width of any stream, the said penalties shall attach.

Rev., s. 3559; Code, s. 1123; 1872-3, c. 107, ss. 1, 2.

The word "and" before the words "whereby the navigation" was originally "or," but was made "and" by judicial construction: *State v. Pool*, 74-402. Using water for "sluicing" a canal bed is not using it as "motive power": *State v. Canal Co.*, 91-637.

The fact that defendant has violated this section does not make him liable for punitive damages in a civil suit: *Warren v. Lumber Co.*, 154-34.

At common law the public has an easement in all navigable waters, which the owner of the soil cannot obstruct: *State v. Narrows Island Club*, 100-477.

Indictment must contain averment that the obstruction was not "for the purpose of utilizing water as a motive power": *State v. Baum*, 128-528; *State v. Narrows Island Club*, 100-477; *State v. Tomlinson*, 77-528. Indictment will lie at common law for obstruction of navigable water simply, but not under this section: *State v. Baum*, 128-600; *State v. Narrows Island Club*, 100-477; *State v. Parrott*, 71-311. Not necessary to charge or prove in an indictment at common law for obstructing navigable water that any actual damage has been suffered by any vessel: *State v. Narrows Island Club*, 100-477.

The charter of the Duplin canal company does not exempt it from indictment for violation of this section: *State v. Canal Co.*, 91-673.

Section cited in *Gwaltney v. Land Co.*, 111-571. Compare *State v. Cobb*, 18-115; *State v. Wilson*, 106-718.

NOTE.—For local legislation as to obstruction in streams, see Bladen county, 1909, c. 331; Burke county, P. L. 1911, c. 295; McDowell, 1907, c. 134; Nash, P. L. 1913, c. 340; Onslow, 1907, c. 95; P. L. Ex. Sess. 1913, c. 39; Orange, P. L. 1913, c. 819; Rowan, 1909, c. 515; Wayne, P. L. Ex. Sess. 1913, c. 178; Wilson, 1907, c. 615, 1908, c. 124; Wilkes, 1909, c. 242.

Sale of drift timber in streams regulated in the counties of Brunswick, New Hanover, and Pender. 1909, c. 52.

7378. Local: Sawdust in streams. If any person shall throw sawdust into any stream he shall be guilty of a misdemeanor and punished as indicated in this section.

1. By a fine not exceeding fifty dollars, or imprisonment not exceeding thirty days, in the counties of Alexander, Guilford, Henderson, Lincoln, Madison, Pamlico, Transylvania, Warren, and Yancey; in Catawba county, not to apply to sawmills run by water-power established prior to the first day of January, one thousand eight hundred and ninety-nine; in Davidson, not to apply to mills erected prior to the eighth day of February, one thousand nine hundred and five; in Jackson, not to apply to sawmills run by water-power; in Clay and Haywood, as to all streams which contain mountain or brook trout; in Anson county, to throw timber, slabs, or sawdust into any stream.

By the same penalty as regards the streams specified in the following counties and localities: Drowning creek and its tributaries in Cumberland, Moore, and Robeson; South river in Bladen, Cumberland, and Sampson; Sawyer's creek or its tributaries in Graham; North and South Muddy creek in McDowell; Buffalo creek in Stokes; Eno river in Orange, from the head of Faucett millpond to the Durham county line; Brushy creek in Cleveland; Banners Elk and all streams in Watauga county which contain mountain or brook trout, but not to apply to sawmills run by water-power erected prior to the first day of January, one thousand eight hundred and ninety-nine, except in streams in which rainbow trout have been placed, and not to apply to Blue Ridge township, to Meadow creek and Gap creek in Stony Fork township, Elk creek in Elk Creek township, nor to Beaver Dam creek in Beaver Dam township.

Rev., s. 3382a; 1889, c. 52; (Pr.) 1895, c. 327; 1897, cc. 130, 285; 1899, cc. 285, 453, 656; 1901, c. 158; 1903, cc. 245, 627, 711, 741, 760; 1905, cc. 139, 191, 206, 214, 247, 474, 578, 775; 1907, cc. 27, 254, 266, 280, 370, 403, 683, 756; 1909, cc. 186, 267, 280, 600, 765; P. L. 1911, c. 568; P. L. 1913, cc. 36, 484, 532; P. L. 1915, c. 318.

2. By a fine not exceeding five dollars or imprisonment not exceeding thirty days, in Edgecombe and Wilkes; and in Iredell, except as to Big Rocky creek.

1907, c. 593; 1909, cc. 209, 242, 272; P. L. 1915, c. 699.

3. By a fine not less than ten dollars and not more than fifty dollars, in Johnston, and each time is a separate offense; and in Montgomery, and each day is a separate offense.

Rev., s. 3382a; 1905, c. 206; 1909, c. 656; P. L. 1911, c. 75.

4. By a fine of fifty dollars for each offense, in Rutherford.

1907, c. 255; P. L. 1911, c. 644.

5. By a fine of not less than fifty nor more than one hundred dollars, or imprisonment for not less than thirty nor more than sixty days, for throwing sawdust in or near any stream in Wake.

1907, c. 621; P. L. 1911, cc. 519, 611; P. L. 1915, c. 373.

6. By punishment in the discretion of the court in Swain county, and as to North Fork and its tributaries above the iron bridge in McDowell county.

Rev., s. 3382a; 1899, c. 453; 1905, c. 206; 1909, c. 763; P. L. 1911, c. 296.

NOTE.—See for similar local statutes applicable to Ashe, Watauga and parts of Alleghany, P. L. 1919, c. 121.

7379. Local: Owners of mills throwing sawdust or other material into streams.

1. If any person owning or operating a sawmill shall throw sawdust, or permit it to be thrown, into any stream he shall be guilty of a misdemeanor and punished as indicated in this section.

a. By fine or imprisonment in the discretion of the court, in Rockingham county; in Stanly county as to all rivers and creeks; in Surry county as to all rivers and creeks, but not to apply to mills run by water-power; as to any stream in Cheoah and Yellow Creek townships in Graham county; as to Cub creek or its tributaries, Bush creek and Pokeberry creek, in Riggsbee township in Chatham county, and as to any creek or branch in said county which empties into Cape Fear river.

Rev., s. 3382a; 1899, cc. 285, 741; 1905, cc. 206, 214; 1907, cc. 254, 601, 740; 1909, cc. 280, 323, 549, 693; P. L. 1911, cc. 443, 523, 755; P. L. Ex. sess. 1913, c. 27.

b. By a fine not exceeding fifty dollars or imprisonment not exceeding thirty days, in Polk county; in Franklin county, except Tar river; in Harnett county, except Cape Fear river; in Yadkin county, but not to apply to mills run by water-power; in Cleveland county, First Broad river, Duncan's creek, Wards' creek, Hinton's creek, or their tributaries, and each day's violation is a separate offense, but this section does not apply to sawmills run by water-power.

Rev., s. 3382a; 1903, cc. 243, 721; 1907, cc. 255, 866, 873; 1909, c. 581; P. L. 1911, cc. 181, 611; P. L. 1913, c. 484.

c. By a fine of not more than ten dollars or imprisonment not more than ten days, in Macon county, but not to apply to mills run by water-power established and in operation before the twenty-ninth day of January, one thousand nine hundred and nine.

Rev., s. 3382a; 1899, c. 285; 1905, c. 206; 1907, c. 266; 1909, s. 36.

d. By a fine of not less than twenty dollars, or imprisonment, or both, in the discretion of the court, one half the fine to go to the informer, in Burke county, as to Cranberry creek, Linville river above gorge, Upper creek and Steele's creek, or their tributaries above the mill near Smyrna church.

Rev., s. 3382a; 1899, c. 656; 1905, c. 238; 1907, c. 430; P. L. 1913, c. 484.

2. If any person owning or operating a sawmill or other woodworking machinery shall throw, or permit to be thrown, any sawdust or other refuse from the mill into any stream, or place such material where it will wash into any stream, he shall be guilty of a misdemeanor and punished as indicated in this section.

a. by a fine of not less than ten nor more than fifty dollars, or imprisoned not more than thirty days, in the counties of Avery, Caldwell, Forsyth, and Richmond; and in Mitchell county, but not to apply to sawmills which saw less than three thousand feet per day.

Rev., s. 3382a; 1905, cc. 775, 776; 1907, cc. 26, 371; P. L. 1911, c. 568; P. L. 1913, c. 484.

b. By fine or imprisonment in the discretion of the court, in Burke county, but not to apply to sawmills run by water-power prior to one thousand nine hundred and seven, not located in the fishing districts unless removed to a new site.

1909, c. 765.

c. By a fine of not less than five nor more than twenty-five dollars or imprisonment for twenty days, in Alamance county, as to Haw river, Big Alamance creek and Little Alamance creek, or their tributaries.

1909, c. 467.

d. By a fine of not more than fifty dollars, or imprisonment not more than thirty days, in Nash county, except as to Tar river, Fishing, Swift, Turkey, Pig-basket, Stony, and Saponey creeks in said county, but not to apply to mills operated by water-power which have no means of hauling dust from the streams.

1909, c. 34.

CHAPTER 123

RURAL COMMUNITIES

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- 7381. Certificate of incorporation.
- 7382. Community meetings.
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- 7384. Duties of board of directors; compensation.
- 7385. Legislative powers of communities.
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ART. 2. ESTABLISHMENT OF CONVENIENCES IN RURAL COMMUNITIES.

- 7394. Assistance by state highway commission.
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ART. 1. ORGANIZED RURAL COMMUNITIES

7380. Petition for incorporation. The people of any rural community in North Carolina, upon petition signed by a majority of the registered voters of such community embracing in area one entire school district, may be incorporated under the provisions of this article, the title of such corporate body being "The.....Community of.....County" (or counties), the name of community and county (or counties) to be supplied in the petition for incorporation: Provided, that no part of such community shall be nearer than two miles to the nearest boundary of any incorporated town or city of five thousand or more inhabitants, and nothing in this article shall be construed to prevent the extension of the limits of any town or city regularly incorporated so as to include territory incorporated under this article. After any school district has been incorporated under the provisions of this article the boundaries of such school district and incorporated rural community may be changed only in the manner prescribed by law for changing the lines of a special-tax school district, except that the county board of education shall proceed to enlarge such boundaries in accordance with law upon the written request of a majority of the school committeemen or trustees of said school district and a written request of a majority of the board of directors of the incorporated rural community.

1919, c. 202, s. 1.

7381. Certificate of incorporation. The petition for incorporation shall be addressed to the secretary of state at his office in Raleigh, who, if such petition is in due form, shall then issue the certificate of incorporation without charge therefor.

1919, c. 202, s. 2.

7382. Community meetings. The registered voters of each community incorporated under the provisions of this article shall hold a public community meeting on the first Saturday in January of each year, or on such other day as may be specified in the petition for incorporation. The place of such meeting shall also be designated in the petition for incorporation; but the time or place, or both, may be changed at any annual meeting to take effect at the following annual meeting, notice of such change to be posted in three public places in such community. At such annual community meeting the voters may adjourn to meet at some other specified date, and other meetings may be held upon petition signed by ten per cent of the registered voters of the community, provided notice of such meeting is posted at three public places in such community at least two weeks prior to such meeting. Questions involving the levy of any tax, however, shall be decided only at the regular annual community meeting.

1919, c. 202, s. 3.

7383. Board of directors elected. At each annual community meeting, as provided in section 7382, the voters shall elect three persons to be known as the "Board of Directors of.....Community," one of whom shall be designated as chairman and another as secretary-treasurer, each performing the duties suggested by his title.

1919, c. 202, s. 4.

7384. Duties of board of directors; compensation. The board of directors of such community shall be charged with the duty of enforcing and executing such ordinances as the community meetings may adopt; and performing such other functions not inconsistent with the laws of North Carolina or the United States as the community meetings may direct. The annual compensation, if any, of such board of directors, or any member thereof, shall be fixed at each annual meeting.

1919, c. 202, s. 5.

7385. Legislative powers of communities. At each meeting of the registered voters of a community they shall have the right to adopt, amend, or repeal ordinances, provided such action is not inconsistent with the laws of North Carolina or the United States, concerning the following subjects: the public roads of the community; the public schools of the community; regulations intended to promote the public health; the police protection; the abatement of nuisances; the care of paupers, aged or infirm persons; to encourage the coming of new settlers; the regulation of vagrancy; aids to the enforcement of state and national laws; the collection of community taxes; the establishment and support of public libraries, parks, halls, playgrounds, fairs, and other agencies of recreation, education, health, music, art, and morals: Provided, that nothing herein contained shall be construed to mean that any community incorporated under the provisions of this article shall lose its identity as a part of the road and school systems of the county or counties in which it is located, nor lose its right to participate the same as before incorporation in the benefits to be derived from county or township funds raised by taxation or otherwise for building or maintaining the public roads, for the public schools, for public health, or for other public uses.

1919, c. 202, s. 6.

7386. Power to tax and to issue bonds. For the promotion of any of the objects mentioned in section 7385, the registered voters of any incorporated community, in annual community meeting assembled, shall have the right to levy taxes or issue bonds upon the property of the community, within limits hereinafter set forth, either for specific purposes or for the general use of the community upon a method of tax division among varying objects as agreed upon by such annual community meeting. The aggregate of taxes levied for such community purposes shall not exceed five mills annually on each dollar of taxable property. The aggregate amount of the bonds issued shall at no time exceed ten per cent of the total property valuation of the community. Any tax imposed or levied under the provisions of this article may be revoked only in the manner prescribed by law for revoking special taxes in a special-tax school district.

1919, c. 202, s. 7.

7387. Majority vote for tax levy; collection. No community meeting may levy a tax unless a majority of the registered voters of the community are present at such meeting and vote by ballot for such tax; but at any annual community meeting a majority of the voters present, whatever their number, may vote to submit the question of levying such a tax to the qualified voters of the community at an election to be held not earlier than thirty days subsequent to such meeting. If the community meeting shall desire to submit separately the question of tax levy for different purposes, it shall mention a name of not more than six words by which each such tax shall be designated, as for example, "Road Tax," "Public Library Tax"; or such community meeting may submit the question of a tax levy for various purposes under the title "For Community Tax." At the election herein provided for each voter may deposit a ballot marked "ForTax" or "Against.....Tax"; and if a majority of the qualified voters of the community at such election shall vote for such tax, then the proposed tax levy shall be enforced and the tax collected at the same time and in the same manner as state and county taxes are now collected, or such incorporated community through its board of directors may name a collector of community taxes and fix his compensation, requiring both tax collector and treasurer to give bond for proper amounts.

1919, c. 202, s. 8.

7388. Directors may act as election officers; result certified to clerk of county commissioners. At any election herein provided for, the board of directors may act as election officers, judges of election, etc., and the ballots shall be counted, compared, canvassed and returned in the same manner as is now provided for general elections in the various counties of the state. The result of any such election shall be certified by the secretary of the board of directors of the community to the clerk of the board of county commissioners, who shall record the same in the minutes of the said board of county commissioners, and no further recording or declaring of the result shall be necessary.

1919, c. 202, s. 9.

7389. Supervision by bureau of community service. The bureau of community service, now directed by the state departments of education, agriculture, and health, the state college of agriculture and engineering, and the state

normal and industrial college, is hereby charged with the duty of securing from the communities of the state incorporated under this article reports as to what each community is doing for the promotion of the purposes mentioned in section 7385; and the aforesaid bureau of community service shall furnish the officers of such incorporated communities forms for keeping records, accounts, etc., and for making reports. The bureau shall also provide forms and instructions to citizens of the state desiring to petition for incorporation under the provisions of this article, and shall publish annually a summary of the work accomplished by incorporated communities. The members of the board of directors of such incorporated communities are required to render such reports to the bureau of community service, and to post copies of same, together with an itemized statement of receipts, disbursements, and balances for the year, in three public places in the community, under the penalty, upon conviction, of a fine of ten dollars each. All printing required under this article shall be paid for by the state department of education.

1919, c. 202, s. 10.

7390. Standards for production and marketing of produce. The board of directors may adopt standards for the production and marketing of produce, canned vegetables, etc., and may adopt labels, trade names, and brands for the same, and regulate their use, requiring the inhabitants of said community to comply with the standards set and adopted by the directors before they can use the brand, trade name, or labels for said community; and the board of directors may adopt such regulations as may be necessary to protect said brands, trade names, etc., may have an inspection of the goods sold thereunder, and may take any and all necessary steps looking to a system of community standard production, and of coöperative community marketing.

1919, c. 202, s. 11.

7391. Violation of community ordinances a misdemeanor; community magistrates. Any person violating any ordinance adopted under the provisions of this article or any rule made by the board of directors or other governing authority authorized by any of the provisions of this article, shall be guilty of a misdemeanor, and upon conviction shall be imprisoned not exceeding thirty days or fined not exceeding fifty dollars, or both, at the discretion of the court. Any magistrate residing within the boundaries of a community incorporated under this article shall have power to hear and try all cases arising from violation of ordinances adopted by such community. If there is no magistrate residing within the boundaries of the community, or if the community shall desire an additional magistrate, there shall be nominated at each annual meeting some suitable person living within the confines of the community who shall, upon proper certification of nomination, be appointed community magistrate by the governor of the state, with all the powers of a magistrate within the bounds of said community.

1919, c. 202, s. 12.

7392. Police officers. The board of directors of any community organized under the provisions of this article are authorized and empowered to employ one or more policemen for the community, whose duties and powers shall be those

prescribed by law for constables for the townships in the various counties of the state; and the said policemen shall receive as compensation the same fees that are now prescribed by law for constables.

1919, c. 202, s. 13.

7393. Precinct registrars to compile lists of registered voters. Each person charged with the duty of registering voters in an election precinct embraced in whole or in part in any incorporated community shall furnish the chairman of the board of directors of such incorporated community a complete list of the registered voters in his precinct at the preceding state election, and from such list the board of directors shall compile an official list of registered voters residing in the community for use in connection with the enforcement of this article; such registrar receiving one-half cent for each name so furnished, to be paid for by the community.

1919, c. 202, s. 14.

ART. 2. ESTABLISHMENT OF CONVENIENCES IN RURAL COMMUNITIES

7394. Assistance by state highway commission. In order to assist in providing for better and more comfortable living conditions in the rural sections throughout the state, by means of the utilization of the many small water-powers that abound in many parts of the state, and by the installation of water systems in rural homes, and by the construction of rural telephone lines, the state highway commission is herewith authorized to advise and assist in providing a water supply and electric power and electric lights for rural communities and individuals outside of incorporated towns, by investigating water-powers and preparing plans for their development and the installation of such apparatus as may be needed to utilize such water-power in developing electric power and for supplying a water system and electric light system, and to furnish plans and specifications for the installation of rural telephone lines and to advise and assist in the formation of rural mutual telephone systems.

1917, c. 267, s. 1.

7395. Appropriation made. For the purpose of carrying out the provisions of this article there is hereby appropriated out of any moneys in the state treasury not otherwise appropriated the sum of five thousand dollars annually, the sum to be drawn upon as directed by the state highway commission.

1917, c. 267, s. 2.

NOTE.—For provision as to moving pictures for rural communities, see Education, art. 31.

For rural libraries, see Education, art. 30.

For special-tax sanitation districts, see Public Health, art. 5.

CHAPTER 124

STATE BOUNDARIES

SEC.

- 7396. Governor to cause boundaries to be established and protected.
- 7397. Payment of expenses of establishing boundaries.
- 7398. Appointment of arbitrators.
- 7399. Disagreement of arbitrators reported to general assembly.
- 7400. Survey, how approved to be effective.

7396. Governor to cause boundaries to be established and protected. The governor of North Carolina is hereby authorized to appoint two competent commissioners and a surveyor and a sufficient number of chainbearers, on the part of the state of North Carolina, to act with the commissioners or surveyors appointed or to be appointed by any of the contiguous states of Virginia, Tennessee, South Carolina, and Georgia, to rerun and remark, by some permanent monuments at convenient intervals, not greater than five miles, the boundary lines between this state and any of the said states.

The governor is also authorized, whenever in his judgment it shall be deemed necessary to protect or establish the boundary lines between this state and any other state, to institute and prosecute in the name of the state of North Carolina any and all such actions, suits, or proceedings at law or in equity, and to direct the attorney-general or such other person as he may designate to conduct and prosecute such actions, suits, or proceedings.

Rev., s. 5315; Code, s. 2289; 1889, c. 475, s. 1; 1881, c. 347, s. 1; 1909, c. 51, s. 1.

7397. Payment of expenses of establishing boundaries. When the line has been rerun and remarked as above provided between this state and any of the contiguous states, or such portion of said lines as shall be mutually agreed by the commissioners, the governor is authorized to issue his warrant upon the state treasurer for such portion of the expenses as shall fall to the share of this state.

Rev., s. 5316; Code, s. 2290; 1889, c. 475, s. 2; 1881, c. 347, s. 2.

7398. Appointment of arbitrators. If any disagreement shall arise between the commissioners, the governor of this state is hereby authorized to appoint arbitrators to act with similar officers to be appointed by the other states in the settlement of the exact boundary.

Rev., s. 5317; Code, s. 2291; 1889, c. 475, s. 3; 1881, c. 347, s. 3.

7399. Disagreement of arbitrators reported to general assembly. In case of any serious disagreement and inability on the part of the said arbitrators to agree upon said boundary, such fact shall be reported by the governor to the next general assembly for their action.

Rev., s. 5318; Code, s. 2292; 1889, c. 475, s. 4; 1881, c. 347, s. 4.

7400. Survey, how approved to be effective. When the commissioners shall have completed the survey, or so much as shall be necessary, they shall report the same to the governor, who shall lay the same before the council of state; and when the governor and the council of state shall have approved the same the governor shall issue his proclamation, declaring said lines to be the true boundary line or lines, and the same shall be the true boundary line or lines between this and the states above referred to.

Rev., s. 5319; Code, s. 2293; 1889, c. 475, s. 5; 1881, c. 347, s. 5.

NOTE.—For special act to rerun portion of Virginia boundary between Fisger's Peak and the Tennessee line, see 1907, c. 98.

For act to rerun portion of South Carolina boundary between beginning at Atlantic ocean and corner of Columbus and Robeson counties, see 1915, c. 188; 1919, c. 166.

CHAPTER 125

STATE DEBT

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ART. 1. FUNDED DEBT

7401. How bonds executed; interest coupons attached; where payable; minimum amount. All bonds or certificates of debt of the state, hereafter to be issued as originals, or as substitutes for such as may be surrendered for transfer, by virtue of any act now or to be hereafter passed, shall be signed by the governor, and countersigned by the state treasurer, and sealed with the great seal of the state, and shall be made payable to such person by name as may be the purchaser, or to bearer; and the principal shall be made payable by the state at a day named in the bond or certificate. And coupons of interest, in such form as may be prescribed by the state treasurer, shall be attached to the certificates, and the certificates and coupons attached thereto shall be made payable at such bank or place in the city of New York as the state treasurer may designate, or at the office of the state treasurer at Raleigh, if preferred by the purchaser: Provided, that if the purchaser or holder may so desire, the bond or certificate shall be payable to him alone, and not to bearer: Provided further, that no certificate shall issue for a less sum than one thousand dollars, unless the same be issued for a surrendered bond of less amount; nor shall any original bond or certificate of debt of the state be sold for a sum less than par value; nor shall any such bond or certificate, issuing in lieu of a transferred bond or certificate, be payable elsewhere than may be the original, except by the consent of the holder it may be made payable at the state treasury.

Rev., s. 5020; Code, s. 3563; R. C., c. 90, s. 3; 1848, c. 89, s. 22; 1852, cc. 9, 10, s. 10.

7402. Title of act and year of enactment recited in bonds. In every bond or certificate of debt issued by the state, and in the body thereof, shall be set forth the title of the act, with the year of its enactment, under the authority of which the same may be issued; or reference shall be made thereto by the number of the chapter, and the year of the legislative session.

Rev., s. 5023; Code, s. 3566; R. C., c. 90, s. 6; 1850, c. 90, s. 6.

7403. Record of bonds kept by state treasurer. The state treasurer shall enter in a book to be kept for that purpose a memorandum of every bond or certificate of debt of the state, issued or to be issued under any act whatever, together with the numbers, dates of issue, when and where payable, at what premium, and to whom the same may have been sold or issued.

Rev., s. 5021; Code, s. 3564; R. C., c. 90, s. 4; 1852, c. 10, s. 2.

7404. Bonds and certificates transferable. All bonds or certificates of debt of the state, which now are or hereafter may be issued on behalf of the state, shall be transferable, such as are payable to bearer, by delivery, and such as are payable to the holder by name alone may be transferred by the holder or his agent in a book to be kept for that purpose by the state treasurer, on surrendering for cancellation the outstanding bond or certificate; and in this latter case of transfer, a new bond or certificate for the same amount shall be issued.

Rev., s. 5019; Code, s. 3562; R. C., c. 90, s. 2; 1848, c. 37, s. 5; 1850, c. 58, s. 4; 1852, c. 11.

7405. Registration and exchange of bonds. Any holder of the bonds of the state, whether in his own right or in a fiduciary capacity, may have the same registered at the office of the state treasurer upon application and presentation of said bonds to the treasurer as hereinafter provided, and the treasurer of the state is hereby authorized to issue registered bonds in exchange for and in lieu of any coupon bonds which have been or may be lawfully issued by the state, upon the surrender to him of said coupon bonds by the holder thereof. The registered bonds so issued shall be of the denomination of ten thousand dollars, one thousand dollars, or five hundred dollars, as the case may be, bearing the date of the day of their issue, and of the same rate of interest as the coupon bonds for which they were issued in exchange, and from the last date of payment of interest on the coupon bonds surrendered, and maturing on the date corresponding to the bonds surrendered. The treasurer is authorized to issue coupon bonds in exchange for and in lieu of any registered bonds issued by the state, upon the surrender of the registered bonds. The coupon bonds so issued shall be of denominations of one thousand dollars or five hundred dollars, bearing date of the day of their issue, and shall bear the same rate of interest and mature on the date corresponding to the bonds surrendered.

Rev., s. 5025; Code, s. 3568; 1883, c. 25; 1887, c. 287.

7406. Record of registered bonds. It shall be the duty of the treasurer to procure and provide at the expense of the state a suitable book or books, in which, upon application and presentation of a bond or bonds as aforesaid, he shall enter, in a manner to be of easy and ready reference, a description of said bond or bonds, giving the number, series, date of issue, denomination, by whom signed, and such other data as may be necessary for the ready identification thereof, together with the name of the person registering the same, the character or capacity

in which said person holds said bond or bonds, and for whose benefit the same is or are registered; and the said treasurer shall enter upon each and every bond so registered as aforesaid the date of said registration, by whom registered, and in what character and capacity, and shall sign said entry officially. The registry of said bonds shall be received as evidence of their existence, amount, and when due and payable, in all cases, when the original is lost or destroyed, or cannot be obtained. The registered bonds issued in exchange under the preceding section shall be in such form as the treasurer may direct, shall be signed by the governor and treasurer, and sealed with the great seal of the state, and shall in all respects stand in the place of and be entitled to all exemption from taxation, and have the same terms of any kind which the coupon bonds now have.

Rev., s. 5026; Code, s. 3569; 1856, c. 16; 1883, c. 25, s. 2; 1887, c. 287, s. 2.

7407. Fees for registration and exchange of bonds. The holder surrendering any bond for exchange shall pay to the state treasurer a fee of two dollars for every one thousand dollars or less of said bonds surrendered for exchange under any law, to be applied by the treasurer towards the expense of providing the new bonds. All bonds surrendered for exchange shall be canceled by the state treasurer and destroyed by him in the presence of the governor and attorney-general.

Rev., s. 5027; 1887, c. 287, ss. 4, 5.

7408. Transfer of registered bonds. No bonds of the state shall, after being registered as provided in this chapter, be negotiable by delivery, but may nevertheless be negotiated or transferred by the person in whose name they are registered, by registration in the name of the person to whom the same are to be transferred or negotiated, on surrendering for cancellation the outstanding bonds, and in such case of transfer a new bond for the same amount shall be issued. The old bond so surrendered shall be canceled and destroyed as provided in the preceding section.

Rev., s. 5028; Code, s. 3570; 1887, c. 287, s. 3.

7409. Chief clerk may make transfers and endorsements. In all cases where the state treasurer may be absent from his office by sickness or other cause, and coupon bonds may be presented for registration or transfer, the chief clerk, during such absence of the treasurer, may make such endorsements, and witness the same, and also such transfers of the said bonds as by law the treasurer himself is authorized to do.

Rev., s. 5024; Code, s. 3567; 1864-5, c. 24.

7410. State bonds exempt from taxation. The original bonds or certificates of debt of the state, which have been issued since the first day of January, one thousand eight hundred and fifty-three, or which may hereafter be issued under the authority of any act whatever, as likewise the bonds and certificates substituted for such original bonds and certificates, shall be, they and the interest accruing thereon, exempt from taxation.

Rev., s. 5022; Code, s. 3565; R. C., c. 90, s. 5; 1852, c. 10, s. 4.

7411. What bonds are fundable. When any person holding and owning any bond or bonds of the state, issued in pursuance of any act of assembly passed at any time before the twentieth day of May, one thousand eight hundred and sixty-one, exclusive of bonds issued for the construction of the North Carolina railroad,

or in pursuance of the act of the general assembly passed at its session in one thousand eight hundred and sixty-five, it being chapter three of the laws of one thousand eight hundred and sixty-five, or in pursuance of an act passed by the general assembly at its session in one thousand eight hundred and sixty-seven, it being chapter fifty-six of the laws of one thousand eight hundred and sixty-seven, or in pursuance of an act entitled “An act to provide for the payment of the state debt contracted before the war,” ratified on the tenth day of March, one thousand eight hundred and sixty-six, or in pursuance of an act entitled “An act to provide for funding the matured interest on the public debt,” ratified the tenth day of August, one thousand eight hundred and sixty-eight; or any registered certificate or certificates belonging to the board of education, issued in pursuance of an act of the general assembly of one thousand eight hundred and sixty-seven, shall surrender and deliver such bond or bonds, with the coupons attached thereto, or registered certificate or certificates, to the state treasurer, then and in that case it shall be the duty of the treasurer to issue and deliver to the person surrendering such bond or bonds, certificate or certificates, a new bond or bonds of the state, due and payable thirty years from the first day of July, one thousand eight hundred and eighty, bearing interest from date at the rate of four per cent per annum, payable semiannually on the first days of January and July in each successive year at the office of the state treasurer.

Rev., s. 5029; Code, s. 3571; 1879, c. 98, s. 1.

See *Leak v. Bear*, 80-271.

7412. Denomination and execution of bonds. The said bonds to be issued in place of the bonds surrendered are to be coupon bonds of the denomination of fifty dollars, one hundred dollars, five hundred dollars, and one thousand dollars, and are to be numbered from one upwards, in accordance with the order of issue. They shall be signed by the governor and treasurer, and sealed with the great seal of the state; but the coupons thereon may be signed by the treasurer alone, or have a facsimile of his signature printed, engraved, or lithographed thereon.

Rev., s. 5030; Code, s. 3572; 1879, c. 98, s. 2.

7413. Form of bonds. The bonds so issued shall be in the usual form of bonds of this state, except as modified and provided by this chapter, and shall have printed on the face of the same the words:

Issued in pursuance of an act entitled “An act to compromise, commute, and settle the state debt,” ratified the....day of....., Anno Domini one thousand eight hundred and seventy-nine.

And in large red letters—

“The Consolidated Debt of the State.”

Rev., s. 5033; Code, s. 3575; 1879, c. 98, s. 5.

7414. Rate of exchange of bonds. The said bonds shall be exchanged for the old bonds of the state, mentioned in section 7411, at the following rates:

Class 1. Bonds exchangeable at forty per cent:

For the bonds issued before the twentieth day of May, eighteen hundred and sixty-one, forty per cent of the principal of the bond or bonds so surrendered.

Class 2. Bonds exchangeable at twenty-five per cent:

For the bonds issued since the close of the war, by authority of acts passed before the war, to aid in the construction of the Western North Carolina railroad, and the bonds issued in pursuance of the said act of assembly of eighteen hundred and sixty-five, chapter three, and act of assembly, eighteen hundred and sixty-seven, chapter fifty-six; the bonds issued October first, eighteen hundred and sixty-one, by authority of the act of eighteen hundred and sixty-one, chapter one hundred and thirty-seven, for Western (Coalfield) railroad; the bonds issued October first, eighteen hundred and sixty-one, by authority of the act of eighteen hundred and fifty-four and fifty-five, chapter two hundred and twenty-eight, section thirty-five, and resolution September the twelfth, eighteen hundred and sixty-one; and the said registered certificates of the literary fund, for the bonds issued July the first, eighteen hundred and sixty-two, by authority of act of eighteen hundred and sixty and sixty-one, chapter one hundred and forty-two, for the construction of the Wilmington, Charlotte and Rutherford railroad, twenty-five per cent of the principal of the bonds or certificates so surrendered.

Class 3. Bonds exchangeable at fifteen per cent; proviso:

And those issued in pursuance of the said funding acts of March tenth, eighteen hundred and sixty-six, and August twentieth, eighteen hundred and sixty-eight, fifteen per cent of the principal of the bond or bonds so surrendered: Provided, that all bonds issued in exchange for the new bonds shall be surrendered with all the coupons attached.

Rev., s. 5032; Code, s. 3574; 1879, c. 98, s. 4.

7415. List of surrendered bonds kept; bonds destroyed. The treasurer shall provide a substantially bound book for the purpose, in which he shall make a correct descriptive list of all bonds of the state surrendered, which list shall embrace the number, date and amount of each, and the purpose for which the same was issued, when this can be ascertained, and the names of the persons surrendering the same; and after such list shall be made, such surrendered bonds, being ascertained to be present, shall be consumed by fire in the presence of the governor, the treasurer, the auditor, the attorney-general, the secretary of state and superintendent of public instruction, who shall each certify under his hand respectively in such book that he saw such described bonds so consumed and destroyed.

Rev., s. 5035; Code, s. 3578; 1879, c. 98, s. 8.

7416. List kept of bonds issued. The treasurer shall provide a well-bound book, in which shall be kept an accurate account and descriptive list of all the new bonds to be issued, and such descriptive list shall embrace the date, number, and amount of such bond or bonds for which the same was issued, and the name of the person to whom issued.

Rev., s. 5036; Code, s. 3579; 1879, c. 98, s. 9.

7417. Bonds exempt from taxation. The said bonds shall be exempt from all state, county, or corporate taxation or assessment, direct or indirect, general or special, whether imposed for the purposes of general revenue or otherwise. The said coupons shall be receivable in payment of any and all state taxes, and the

same shall be expressed on the face of each coupon. The coupon shall bear the same number as the bonds to which they are attached, and in addition be numbered from one upwards, in accordance with the date of their maturity.

Rev., s. 5031; Code, s. 3573; 1879, c. 98, s. 3.

7418. Fiduciaries may exchange bonds. It shall be lawful for any executor, administrator, guardian, trustee, director of any corporation, and any and all other persons acting in a fiduciary capacity, holding bonds of the state, to make the exchange provided in this chapter, and they shall be absolved from all liability on account of said exchange.

Rev., s. 5037; Code, s. 3580; 1879, c. 98, s. 10.

7419. Extension of time to compromise state debt. So much of this chapter as authorizes the exchange of bonds and the issue of new bonds in compromise and settlement of the state debt, being section 7411 of this chapter, shall continue in force until the first day of July, one thousand nine hundred and ten. The governor is directed to resist the collection of all such bonds as are not funded by the time specified herein: Provided, that in issuing such bonds under this extension the public treasurer shall, before delivering any new bonds thereunder, cut off and cancel all coupons whose date of maturity is prior to the time of such delivery.

Rev., s. 5038; Code, s. 3581; 1879, c. 98, s. 11; 1883, c. 6, ss. 1, 2; 1893, c. 47; 1901, c. 126; 1903, c. 39; 1907, c. 96; 1909, c. 703; 1919, c. 314, s. 5.

7420. Treasurer to give notice. The state treasurer is authorized to give public notice of this plan for a settlement of the state's indebtedness by advertising in such newspapers as he may select.

Rev., s. 5045; Code, s. 3587; 1879, c. 98, s. 17.

7421. Certain taxes applied to interest on bonds. All state taxes levied and collected from professions, trades, incomes, merchants, dealers in cigars, and three-fourths of all the taxes collected from wholesale and retail dealers in spirituous, vinous, and malt liquors, shall be held and applied to the payment of the interest on said bonds, and the provisions of this section shall be deemed and taken to be a material part of the consideration for which the bonds of the state shall or may be surrendered.

Rev., s. 5039; Code, s. 3576; 1879, c. 98, s. 6.

7422. Interest also paid out of general funds. As a further proviso for the purpose of paying the interest on the consolidated bonds, if the taxes for any one year upon the subjects of taxation hereinbefore mentioned shall be insufficient to pay said interest, then and in that case the state treasurer is authorized to apply any funds in the treasury not otherwise appropriated to that purpose.

Rev., s. 5040; Code, s. 3582; 1879, c. 98, s. 12.

7423. Excess funds invested in bonds. If the whole fund raised by such taxes shall not in any one year be required to pay such accruing interest, then and in that case it shall be the duty of the treasurer, with the sanction of the governor and the auditor, to invest the surplus in such of the consolidated bonds or the

state bonds issued in aid of the North Carolina railroad, known as construction bonds, or in the state's prison bonds, or in the bonds of the issue of one thousand nine hundred and three, as he can buy at the lowest price; and the treasurer may, with the approval of the governor and auditor, sell any portion of the bonds so purchased if necessary to enable him to pay promptly the interest on the consolidated debt of the state. And the treasurer may, with the approval of the governor and auditor, sell any of the consolidated bonds in which he has heretofore invested such surplus and invest the proceeds in the state bonds in aid of the North Carolina railroad, known as construction bonds, to be held by the treasurer for the purpose of protecting the interest on the consolidated debt of the state and sold by him if necessary for that purpose.

Rev., s. 5034; Code, s. 3577; 1879, c. 98, s. 7; 1885, c. 403; 1887, c. 231.

7424. Contingent bonds to pay interest. In the event that the taxes collected in any one year upon the aforesaid subjects of taxation and the funds not otherwise appropriated in the treasury, when added together, shall be inadequate to pay said interest, then, in order to provide for the deficiency, the state treasurer is authorized to issue coupon bonds of the denomination of five hundred dollars, bearing date the first day of October or April of the year of the issue, according as one or the other of said dates shall be nearest in point of time to the date of the issue. Said bonds shall be payable forty years after date, but redeemable after ten years at the option of the state, with interest at the rate of six per centum per annum, payable semiannually on the first days of April and October. Said bonds shall bear upon their face in red letters the words "Contingent Bonds," and shall be numbered from one upwards, in accordance with the order of their issue. They shall be signed by the governor and treasurer and sealed with the great seal of the state; but the coupons thereon may be signed by the treasurer alone, or have a facsimile of his signature printed, engraved, or lithographed thereon. The said bonds and coupons shall be exempt from all state, county, or corporate taxation or assessment, direct or indirect, general or special, whether imposed for the purposes of general revenue or otherwise, and they shall be lawful investments by all executors, administrators, guardians, and fiduciaries generally. The coupons on said bonds shall bear the same number as the bonds to which they are attached, and shall in addition be numbered from one upwards in accordance with the date of their maturity, and they shall be, and shall so express upon their face that they are, receivable at and after maturity in payment of all taxes, debts, demands, and dues to the state of every nature and kind whatsoever.

Rev., s. 5041; Code, s. 3583; 1879, c. 98, s. 13.

7425. Treasurer may sell bonds. The state treasurer shall be authorized to sell so many of said bonds at par as shall be necessary to provide for the deficiencies aforesaid: Provided, that he shall not issue and sell in the aggregate more than six hundred of these bonds.

Rev., s. 5042; Code, s. 3584; 1879, c. 98, s. 14.

7426. Payment of interest on contingent bonds. The provisions of this chapter for paying the interest on the consolidated bonds shall apply as well to the payment of the interest of the said contingent bonds.

Rev., s. 5043; Code, s. 3585; 1879, c. 98, s. 15.

7427. Appropriation to carry out this chapter. For the purpose of carrying out the provisions of this chapter in relation to the furnishing of proper blank bonds and coupons, and for the purpose of advertising through the public journals, or otherwise, the details of exchange, for the information of the holders of the bonds, the state treasurer is authorized, with the approval of the governor, to use any funds not otherwise appropriated in the treasury, not exceeding the sum of five thousand dollars, and the public treasurer is authorized to use so much of such sum as may be necessary for the purpose of advertising through the public journals, or otherwise, the details of exchange for the information of holders of said bonds.

Rev., s. 5044; Code, s. 3586; 1879, c. 98, s. 16; 1901, c. 126, s. 3.

7428. New bond issue authorized. For the purpose of paying off the consolidated debt bonds of the state, issued by virtue of chapter ninety-eight of the laws of one thousand eight hundred and seventy-nine, which bonds are outstanding in the sum of three million four hundred and twenty-seven thousand dollars, and mature on the first day of July, one thousand nine hundred and ten, the state treasurer is authorized and directed to issue bonds of the state of North Carolina, payable forty years after the first day of July, one thousand nine hundred and ten, to an amount not to exceed the sum of three million four hundred and thirty thousand dollars.

1909, c. 399, s. 1.

7429. Rate of interest on bonds. All of said bonds shall bear interest at a rate not exceeding four per cent per annum from the first day of July, one thousand nine hundred and ten, until paid, which interest shall be payable semiannually on the first days of January and July of each year, so long as any portion of the bonds shall remain due and unpaid.

1909, c. 399, s. 2.

7430. Denomination of bonds; application of proceeds. The bonds authorized and directed to be issued by the preceding sections shall be coupon bonds of the denomination of five hundred dollars and one thousand dollars each, as may be determined by the state treasurer, and shall be signed by the governor and the state treasurer and sealed with the great seal of the state. The coupons thereon may be signed by the state treasurer alone, or may have a facsimile of his signature printed, engraved, or lithographed thereon; and the bonds shall in all other respects be in such form as the state treasurer may direct, and the coupons thereon shall, after maturity, be receivable in payment of all taxes, debts, dues, licenses, fines, and demands due the state of North Carolina of any kind whatsoever, which shall be expressed on the face of the bonds. Before selling the bonds herein authorized to be issued, the treasurer shall advertise the sale and invite sealed bids in such manner as in his judgment may seem to be most effectual to secure the best price. He is authorized to accept bids for the entire issue or of any portion thereof, and where the conditions are equal he shall give the preference of purchase to the citizens of North Carolina; and he is authorized to sell the bonds herein authorized in such manner as in his judgment will pro-

duce the best price. Any balance left in the hands of the state treasurer from the sale of said bonds, after paying the consolidated debt bonds and the costs of issuing the bonds herein provided for, shall be covered into the general fund.

1909, c. 399, s. 3; 1919, c. 314, s. 5.

7431. Exemption from taxation; investment by fiduciaries. The bonds and coupons shall be exempt from all state, county, or municipal taxation or assessment, direct or indirect, general or special, whether imposed for purposes of general revenue or otherwise, and the interest paid thereon shall not be subject to taxation as for income, nor shall said bonds and coupons be subject to taxation when constituting a part of the surplus of any bank, trust company, or other corporation. All executors, administrators, guardians, and fiduciaries generally may invest in said bonds.

1909, c. 399, ss. 4, 5.

Investment of part of the surplus of a bank or trust company in those bonds should be deducted from the aggregate value of the assets in ascertaining the value of its shares for taxation: Pullen v. Corp. Com., 152-548. See section 7948.

7432. Payment of compromise bonds. The state treasurer is authorized to pay cash instead of issuing bonds to take up the outstanding compromise bonds according to the provisions of chapter ninety-eight, laws of one thousand eight hundred and seventy-nine, at fifteen, twenty-five, and forty cents on the principal only.

1913, c. 131.

ART. 2. BONDS FOR THE CARE OF THE INSANE. 1909

7433. Bond issue authorized. For the purpose of paying the two hundred and fifty thousand dollars already borrowed by the state treasurer and to make provision for the two hundred and fifty thousand dollars yet to be expended by the state hospital commission by virtue of chapter one hundred and ninety-one of the public laws of one thousand nine hundred and seven, the state treasurer is hereby authorized and directed to issue bonds of the state of North Carolina, payable forty years after the first day of July, one thousand nine hundred and nine, to an amount not to exceed the sum of five hundred thousand dollars: Provided, that out of the proceeds of said bonds shall be paid the sum of twenty thousand dollars deficit existing in the accounts of the state hospital at Morganton, and also the sum of eleven thousand dollars deficit existing in the accounts of the eastern hospital at Goldsboro.

1909, c. 510, s. 1.

So much of the surplus, over and above capital, as is invested in these nontaxable bonds, is exempt and must be deducted from the surplus in assessing the value of the stock of a bank for taxation: Pullen v. Corp. Com., 152-548.

7434. Rate of interest on bonds. All of such bonds shall bear interest at a rate not exceeding four per cent per annum from the first day of July, one thousand nine hundred and nine, until paid, payable semiannually on the first days of January and July of each year, so long as any portion of the bonds remain due and unpaid.

1909, c. 510, s. 2.

7435. Formal execution and sale of bonds. The bonds authorized and directed to be issued by the preceding sections shall be coupon bonds, of the denomination of five hundred dollars and one thousand dollars each, as may be determined by the state treasurer, and shall be signed by the governor and state treasurer and sealed with the great seal of the state. The coupons thereon may be signed by the state treasurer alone or may have a facsimile of his signature printed, engraved, or lithographed thereon, and the bonds shall in all other respects be in such form as the state treasurer may direct; and the coupons thereon shall, after maturity, be receivable in payment of all taxes, debts, dues, licenses, fines, and demands due the state of North Carolina, which shall be expressed on the face of the bonds. Before selling the bonds herein authorized to be issued, the treasurer shall advertise the sale and invite sealed bids, in such manner as in his judgment may seem to be most effectual to secure the best price. He is authorized to accept bids for the entire issue or of any portion thereof, and where the conditions are equal he shall give the preference of purchase to the citizens of North Carolina; and he is authorized to sell the bonds herein authorized in such manner as in his judgment will produce the best price.

1909, c. 510, s. 3.

7436. Exemption from taxation; investment by fiduciaries. The bonds and coupons shall be exempt from all state, county, or municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, and the interest paid thereon shall not be subject to taxation as for income, nor shall the bonds and coupons be subject to taxation when constituting a part of the surplus of any bank, trust company, or other corporation. All executors, administrators, guardians, and fiduciaries generally may invest in such bonds.

1909, c. 510, ss. 4, 5.

As to exemptions from taxation in investments of bank surplus, see *Pullen v. Corp. Com.*, 152-548.

ART. 3. BONDS FOR STATE BUILDING. 1911

7437. Bond issue authorized. For the purpose of erecting a state building as provided for in chapter sixty-six of the public laws of one thousand nine hundred and eleven, the state treasurer is authorized and directed to issue bonds of the state of North Carolina, payable forty years after the first day of July, one thousand nine hundred and eleven, to an amount not exceeding the sum of two hundred and fifty thousand dollars, such bonds to be issued and sold, after due advertisement, on the best obtainable terms from time to time as the money is needed to meet the expenses of the building commission. Said bonds shall not be sold for less than par. All of said bonds shall bear interest at a rate not exceeding four per cent per annum, from the date of issue until paid, which interest shall be paid semiannually on the first days of January and July of each year, so long as any portion of the bonds shall remain due and unpaid. If in the progress of the work funds should be needed at a time when financial conditions

should seem unfavorable for the sale of bonds, then, in his discretion, the state treasurer may negotiate a temporary loan or loans upon the best obtainable terms, and, if necessary, pledge any of the unsold bonds as collateral therefor.

1911, c. 66, s. 8.

7438. Formal execution of bonds. The bonds authorized to be issued by the preceding section shall be coupon bonds of the denomination of one hundred dollars, five hundred dollars, and one thousand dollars, as may be determined by the state treasurer, and shall be signed by the governor and the state treasurer, and sealed with the great seal of state. The coupons thereon may be signed by the state treasurer, or may have a facsimile of his signature printed, engraved, or lithographed thereon; and the bonds shall in all other respects be in such form as the state treasurer may direct.

1911, c. 66, s. 9.

7439. Exemption from taxation; investment by fiduciaries. The bonds and coupons shall be exempt from all state, county, or municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, and the interest paid thereon shall not be subject to taxation as for income, nor shall the bonds or coupons be subject to taxation when constituting a part of the surplus of any bank, trust company, or other corporation, but when constituting a part of such surplus shall be deducted from the total assets in order to ascertain the taxable value of such shares. All executors, administrators, guardians, and fiduciaries generally may invest in such bonds.

1911, c. 66, ss. 10, 11.

ART. 4. BONDS FOR PAYMENT OF STATE DEBT (1903) AND SOUTH DAKOTA BONDS. 1911

7440. New bond issue authorized. For the purpose of paying off the bonds of the state by virtue of chapter seven hundred and fifty of the public laws of one thousand nine hundred and three, and chapter five hundred and forty-three of the public laws of one thousand nine hundred and five, all of which bonds fall due on the first day of January, one thousand nine hundred and thirteen, the state treasurer is hereby authorized and directed to issue bonds of the state of North Carolina, payable forty years after the first day of January, one thousand nine hundred and thirteen, to an amount not to exceed the sum of five hundred and fifty thousand dollars.

1911, c. 73, s. 1.

NOTE.—For State Debt Bonds, 1903, see Revisal of 1905, ss. 5058-5061; for South Dakota Bonds, see Revisal of 1905, s. 5067a.

7441. Rate of interest on bonds. All of said bonds shall bear interest at a rate not exceeding four per cent per annum from the first day of January, one thousand nine hundred and thirteen, until paid, which interest shall be payable semi-annually on the first days of January and July of each year, so long as any portion of the said bonds shall remain due and unpaid.

1911, c. 73, s. 2.

7442. Formal execution of bonds; application of proceeds. The bonds authorized and directed to be issued by the preceding sections shall be coupon bonds of the denomination of five hundred dollars and one thousand dollars each, as may be determined by the state treasurer, and shall be signed by the governor and the state treasurer and sealed with the great seal of the state. The coupons thereon may be signed by the state treasurer alone, or may have a facsimile of his signature printed, engraved, or lithographed thereon; and the bonds shall in all other respects be in such form as the state treasurer may direct; and the coupons thereon shall, after maturity, be receivable in payment of all taxes, debts, dues, licenses, fines, and demands due the state of North Carolina, which shall be expressed on the face of said bonds. Before selling the bonds herein authorized to be issued, the treasurer shall advertise the sale and invite sealed bids in such manner as in his judgment may seem to be the most effectual to secure the best price. He is authorized to accept bids for the entire issue or of any portion thereof, and, where the conditions are equal, he shall give the preference of purchase to the citizens of North Carolina; and he is authorized to sell the bonds herein authorized in such manner as in his judgment will produce the best price. Any balance left in the hands of the state treasurer from the sale of the bonds, after paying the bonds falling due January first, one thousand nine hundred and thirteen, and the costs of issuing the bonds herein provided for, shall be covered into the general fund.

1911, c. 73, s. 3.

7443. Exemption from taxation; investment by fiduciaries. The bonds and coupons shall be exempt from all state, county, or municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purposes of general revenue or otherwise, and the interest paid thereon shall not be subject to taxation as for income, nor shall the bonds and coupons be subject to taxation when constituting a part of the surplus of any bank, trust company, or other corporation. All executors, administrators, guardians, and fiduciaries generally may invest in such bonds.

1911, c. 73, ss. 4, 5.

7444. Payment of bonds similar to South Dakota bonds. The state treasurer is authorized to pay to any other holder and owner of the bonds of the issue upon which the South Dakota judgment was rendered, payment of which was provided for in chapter five hundred and forty-three of the public laws of one thousand nine hundred and five, the same price per bond as he is herein authorized to pay to Schaffer Brothers, to wit, twenty-five per cent of said bonds, with interest on said twenty-five per cent.

1909, c. 718.

ART. 5. BONDS FOR CENTRAL HEATING PLANT. 1913

7445. Bond issue authorized. For the purpose of providing a central heating plant as directed in chapter one hundred and forty-three of the public laws of one thousand nine hundred and thirteen, the state treasurer is authorized and directed to issue bonds of the state of North Carolina, payable forty years after the first day of July, one thousand nine hundred and thirteen, to an amount not

exceeding the sum of forty thousand dollars, such bonds to be issued and sold, after due advertisement, on the best obtainable terms from time to time as the money is needed to meet the expenses of the board of public buildings and grounds. Said bonds shall not be sold for less than par. All of said bonds shall bear interest at a rate not exceeding four per cent per annum from the date of issue until paid, which interest shall be paid semiannually on the first days of January and July of each year, so long as any portion of the bonds remain due and unpaid. If in the progress of the work funds should be needed at a time when financial conditions should seem unfavorable for the sale of bonds, then, in his discretion, the state treasurer may negotiate a temporary loan or loans upon the best obtainable terms and, if necessary, pledge any of the unsold bonds as collateral therefor.

1913, c. 143, s. 3.

7446. Formal execution of bonds. The bonds authorized and directed to be issued by the preceding section shall be coupon bonds of the denominations of one hundred dollars, five hundred dollars, or one thousand dollars each, as may be determined by the state treasurer, and shall be signed by the governor and the state treasurer, and shall be sealed with the great seal of the state. The coupons thereon may be signed by the state treasurer, or may have a facsimile of his signature printed, engraved, or lithographed thereon; and the bonds shall in all other respects be in such form as the state treasurer may direct.

1913, c. 143, s. 4.

7447. Exemption from taxation. The bonds and coupons shall be exempt from all state, county, or municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purposes of general revenue or otherwise, and the interest paid thereon shall not be subject to taxation as for income, nor shall the bonds or coupons be subject to taxation when constituting a part of the surplus of any bank, trust company, or other corporation, but when constituting a part of such surplus shall be deducted from the total assets in order to ascertain the taxable value of such shares.

1913, c. 143, s. 5.

ART. 6. IMPROVEMENT BONDS. 1913

7448. Bond issue authorized. For the purpose of relieving the deficit in the state treasury, for furnishing, painting, and heating the new state building, for rearranging and furnishing the supreme court building, and installing a new equipment in the office of the state treasurer, and for meeting the appropriations made for permanent improvements for the several state institutions hereinafter mentioned, the state treasurer is authorized and directed to issue bonds of the state of North Carolina, payable forty years after the first day of July, one thousand nine hundred and thirteen, to an amount not to exceed the sum of one million one hundred and forty-two thousand and five hundred dollars.

1913, c. 102, s. 1.

7449. Rate of interest on bonds. All of said bonds shall bear interest at a rate not exceeding four per cent per annum from the first day of July, one thousand

nine hundred and thirteen, until paid, which interest shall be payable semi-annually on the first days of January and July of each year so long as any portion of the bonds remain unpaid.

1913, c. 102, s. 2.

7450. Formal execution and sale of bonds. The bonds authorized and directed to be issued by the preceding sections shall be coupon bonds of the denomination of five hundred dollars and one thousand dollars each, as may be determined by the state treasurer, and shall be signed by the governor and the state treasurer, and sealed with the great seal of the state. The coupons thereon may be signed by the state treasurer alone, or may have a facsimile of his signature printed, engraved, or lithographed thereon; and the bonds shall in all other respects be in such form as the state treasurer may direct; and the coupons thereon shall, after maturity, be receivable in payment of all taxes, debts, dues, licenses, fines, and demands due the state of North Carolina, which shall be expressed on the face of the bonds. Before selling the bonds herein authorized to be issued, the treasurer shall advertise the sale and invite sealed bids in such manner as in his judgment may seem to be the most effectual to secure the best price. He is authorized to accept bids for the entire issue or of any portion thereof, and, where the conditions are equal, he shall give the preference of purchase to the citizens of North Carolina; and he is authorized to sell the bonds herein authorized in such manner as in his judgment will produce the best price.

1913, c. 102, s. 3.

7451. Exemption from taxation; investment by fiduciaries. The bonds and coupons shall be exempt from all state, county, or municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purposes of general revenue or otherwise, and the interest paid thereon shall not be subject to taxation as for income, nor shall said bonds and coupons be subject to taxation when constituting a part of the surplus of any bank, trust company, or other corporation. All executors, administrators, guardians, and fiduciaries generally may invest in such bonds.

1913, c. 102, ss. 4, 5.

7452. Application of proceeds. The proceeds from the sale of said bonds are to be expended in accordance with the provisions of the general appropriation bill, enacted at the session of the general assembly of one thousand nine hundred and thirteen, as follows: To cover the deficit in the state treasury, six hundred thousand dollars; for equipping and painting the new administration building, seventy-five thousand dollars; for remodeling and refurnishing the supreme court building and furnishing the office of the state treasurer, forty thousand dollars; for a central heating plant, forty thousand dollars; for permanent improvements at the several state institutions, as follows: state hospital at Morganton, fifty thousand dollars; state hospital at Goldsboro, twenty-five thousand dollars; North Carolina state college of agriculture and engineering at Raleigh, twenty-five thousand dollars; university of North Carolina, one hundred thousand dollars; the state normal and industrial college at Greensboro, fifty thousand dollars; the negro agricultural and technical college at Greensboro, seven-

teen thousand five hundred dollars; the Appalachian training school at Boone, fifteen thousand dollars; the Cullowhee normal and industrial school, fifteen thousand dollars; East Carolina teachers' training school at Greenville, forty thousand dollars; the North Carolina sanatorium for the treatment of tuberculosis, at Sanatorium, twenty thousand dollars; for the purchase of land for the state school for the blind and the deaf, near Raleigh, thirty thousand dollars.

1913, c. 102, s. 7.

ART. 7. BONDS FOR PAYMENT OF NORTH CAROLINA RAILROAD BONDS. 1919

7453. New bond issue authorized. For the purpose of paying off the bonds issued for the purpose of renewing and adjusting a portion of the state debt incurred to aid in the construction of the North Carolina railroad, issued by virtue of chapter one hundred and thirty-eight of the laws of one thousand eight hundred and seventy-nine, which bonds are now outstanding in the sum of two million seven hundred and twenty thousand dollars and will mature on the first day of April, one thousand nine hundred and nineteen, the state treasurer is hereby authorized and directed to issue bonds of the state of North Carolina to an amount not to exceed the sum of two million seven hundred and twenty thousand dollars, which said bonds may be issued, in the discretion of the state treasurer, in one or more series, payable and maturing not exceeding forty years after the first day of April, one thousand nine hundred and nineteen.

1919, c. 1, s. 1.

NOTE.—For North Carolina railroad bonds, see Revisal of 1905, ss. 5046-5057.

7454. Rate of interest on bonds. All of said bonds shall bear interest at a rate not exceeding four per cent per annum from the first day of April, one thousand nine hundred and nineteen, until paid, which said interest shall be payable semi-annually on the first days of October and April of each and every year, so long as any portion of the said bonds shall remain due and unpaid.

1919, c. 1, s. 2.

7455. Execution and sale of bonds; application of proceeds. The bonds authorized and directed to be issued by the preceding sections shall be coupon bonds of the denominations of five hundred dollars and one thousand dollars each, as may be determined by the state treasurer, and shall be signed by the governor and the state treasurer and sealed with the great seal of the state. The coupons thereon may be signed by the state treasurer alone, or may have a facsimile of his signature printed, engraved, or lithographed thereon; and the said bonds shall in all respects be in such form as the said treasurer may direct, and the coupons thereon shall, after maturity, be receivable in payment of all taxes, debts, dues, licenses, fines, and demands due the state of North Carolina, of any kind whatsoever, which shall be expressed on the face of said bonds. Before selling the bonds herein authorized to be issued, the treasurer shall advertise the sale and invite sealed bids in such manner as will secure the sale of the bonds at the highest price, not less than their par value. He is authorized to accept bids for the entire issue or for any portion thereof, and where the conditions are equal, he shall give the preference of purchase to the citizens of North Carolina; and he is

authorized to sell the bonds herein authorized in such manner as will secure the sale of the bonds at the best price, not less than their par value. Any balance left in the hands of the state treasurer from the sale of these said bonds, after paying the said bonds issued for the purpose of renewing and adjusting a portion of the state debt incurred to aid in the construction of the North Carolina railroad, and the cost of issuing the bonds herein provided for, shall be covered into the general fund.

1919, c. 1, s. 3.

7456. Exemption from taxation; investment by fiduciaries. Such bonds and coupons shall be exempt from all state, county, and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, and the interest paid thereon shall not be subject to taxation as for income, nor shall said bonds and coupons be subject to taxation when constituting a part of the surplus of any bank, trust company, or other corporation. All executors, administrators, guardians, and fiduciaries generally may invest in such bonds.

1919, c. 1, ss. 4, 5.

7457. Treasurer may borrow and execute notes if bonds not sold. In the event the state treasurer shall not be able to sell any or all of the state bonds herein authorized to be issued, and shall not be able to sell the bonds authorized to be issued under article 8 of this chapter, then the state treasurer is hereby authorized, empowered and directed, by and with the advice of the governor and his council of state, to borrow for a period not exceeding two years and at the lowest rate of interest obtainable, such sum of money as shall be required to pay in full the bonds of the state of North Carolina payable on April first, one thousand nine hundred and nineteen, and also to the amount of the bonds authorized to be issued under article 8 of this chapter; and the state treasurer is authorized and empowered to execute and deliver, in the name of the state, notes for the money so borrowed, and to renew the same from time to time, if necessary, but, however, for a total period not longer than two years from April first, one thousand nine hundred and nineteen. And the said treasurer, in the event he shall not be able to sell, by the advertisement in this article directed, all of said bonds in this article authorized to be issued and the bonds authorized to be issued under article 8 of this chapter, is authorized, empowered and directed to sell thereafter any of said bonds from time to time, as he may be able, until the entire issues are sold, at the best price, but not less than the par value thereof and accrued interest.

1919, c. 1, s. 6.

7458. Notes exempted from taxation; investment by fiduciaries. All notes authorized under this article to be issued by the state treasurer in lieu of bonds for borrowed money shall be exempt from all state, county, and municipal taxation or assessment, direct or indirect, general or special, whether imposed for purposes of general revenue or otherwise, and the interest paid thereon shall not be subject to taxation as for income, nor shall said notes be subject to taxation when constituting a part of the surplus of any bank, trust company, or other corporation. All executors, administrators, guardians or other fiduciaries generally may invest in such notes.

1919, c. 11, ss. 1, 2.

ART. 8. IMPROVEMENT BONDS. 1917

7459. Bond issue authorized. For the purpose of permanently enlarging the state's educational and charitable institutions to make them adequate to the demands and necessities of the people of the state, the state treasurer is hereby authorized and directed to issue bonds of the state of North Carolina, payable in the manner and at the date hereinafter described, to an amount not exceeding three million dollars, and said bonds shall be issued in the following amounts, to wit:

To be issued in the year 1917.....	\$500,000.00
To be issued in the year 1918.....	\$500,000.00
To be issued in the year 1919.....	\$500,000.00
To be issued in the year 1920.....	\$500,000.00
To be issued in the year 1921.....	\$500,000.00
To be issued in the year 1922.....	\$500,000.00

1917, c. 154, s. 1.

The provision under this bond issue for charitable institutions does not repeal the appropriation of ten thousand dollars annually for extension work in regard to tuberculosis: *Sanatorium v. State Treasurer*, 173-810.

7460. Rate of interest on bonds. All of said bonds shall bear interest at a rate not exceeding four per centum per annum from the date of issue until paid, and the bonds shall bear date as of the first day of July of each year in which they are authorized to be issued from the year one thousand nine hundred and seventeen to the year one thousand nine hundred and twenty-two, both inclusive, which interest shall be payable semiannually on the first days of January and of July of each year, so long as any portion of the bonds shall remain due and unpaid.

1917, c. 154, s. 2.

7461. Execution and sale of bonds. The bonds authorized and directed to be issued by the preceding sections shall be coupon bonds of the denomination of fifty dollars and of one hundred dollars and of five hundred dollars and one thousand dollars each, as may be determined by the state treasurer, and shall be signed by the governor and state treasurer and sealed with the great seal of the state. The coupons thereon may be signed by the state treasurer alone, or may have a facsimile of his signature printed, engraved, or lithographed thereon, and the bonds shall in all other respects be in such form as the state treasurer may direct. The coupons thereon shall, after maturity, be receivable in payment of all taxes, debts, dues, licenses, fines, and demands due the state of North Carolina, which shall be expressed on the face of the bonds. Before selling any of the series of bonds herein authorized to be issued, the state treasurer shall advertise the sale and invite sealed bids in such manner as in his judgment may seem to be most effectual to secure the par of the bonds at the lowest rate of interest. He is authorized to accept bids for the entire issue of the bonds in any one year, or of any portion thereof, and where the conditions are equal he shall give the preference of purchase to the citizens of North Carolina; and he is authorized to sell the bonds herein authorized in such manner as in his judgment will produce the par value of the bonds at the lowest rate of interest. He is further authorized to sell the bonds at not less than par and accrued interest at any time on and

after the first day of July of each and every year until the full issue authorized to be issued under this article shall have been issued; and he may prescribe and publish the terms of payment for the bonds and receive subscriptions therefor: Provided, the state shall receive not less than the par value of the bonds, plus accrued interest thereon at the time of delivery. The bonds shall be due and payable, one hundred thousand dollars on July first, one thousand nine hundred and twenty-three, and one hundred thousand dollars on July first of each year thereafter until the whole series authorized by this article to be issued shall be paid.

1917, c. 154, s. 3; 1919, c. 44, ss. 1, 2.

7462. Exemption from taxation; investment by fiduciaries. The bonds and coupons shall be exempt from all state, county, or municipal taxation or assessment, direct or indirect, general or special, whether imposed for purposes of general revenue or otherwise, and the interest paid thereon shall not be subject to taxation as for income, nor shall the bonds and coupons be subject to taxation when constituting a part of the surplus of any bank, trust company, or other corporation. All executors, administrators, guardians, and fiduciaries generally may invest in such bonds.

1917, c. 154, ss. 4, 5.

7463. Application of proceeds. The proceeds derived from the sale of said bonds shall be used entirely and exclusively for the permanent improvement and equipment of the following institutions of the state and in the following amounts, to wit:

The state hospital at Raleigh, two hundred thousand dollars.

The state hospital at Morganton, two hundred thousand dollars.

The state hospital at Goldsboro, one hundred twenty-five thousand dollars.

The North Carolina school for the deaf, located at Morganton, sixty thousand dollars.

The Stonewall Jackson training school, near Concord, fifty thousand dollars.

The university of North Carolina, five hundred thousand dollars.

North Carolina sanatorium for the treatment of tuberculosis, located at Sanatorium, one hundred and fifty thousand dollars.

East Carolina teachers' training school at Greenville, two hundred thousand dollars.

Appalachian training school, at Boone, fifty thousand dollars.

Cullowhee normal and industrial school at Cullowhee, forty thousand dollars.

North Carolina state college of agriculture and engineering, located at Raleigh, three hundred thousand dollars.

The state normal and industrial college, located at Greensboro, five hundred thousand dollars.

For the negro agricultural and technical college at Greensboro, twenty-five thousand dollars.

For the state normal school for negroes, ten thousand dollars.

For the state board of education, for the purpose of aiding in building public schoolhouses in the state, five hundred thousand dollars.

For the erection of a state's storage warehouse in the city of Raleigh, and the purchase of land therefor, fifty thousand dollars.

For the installation of approved apparatus for the protection of the state's institutions against fire, forty thousand dollars.

The proceeds of the sale of bonds herein authorized shall be used solely and exclusively for the permanent enlargement and improvement of the state's institutions herein named and for the other purposes herein named; but the building commission is authorized and directed, if they shall deem it necessary, to use such part of the amount appropriated to any institution herein named for the repair or repairs of said institution which may in their judgment be necessary to preserve the buildings for all use.

The building commission is directed to prorate the proceeds of the sale of bonds issued each year under this article according to the amount appropriated to each institution or object. And the building commission shall not approve any expenditure or contract during the years one thousand nine hundred and seventeen and one thousand nine hundred and eighteen in excess of the appropriations for said years.

1917, c. 154, ss. 6, 8; joint resolution No. 40, 1917; 1919, c. 314, s. 5.

NOTE.—See State Departments, Institutions, and Commissions, art. 2, State Building Commission.

ART. 9. DEBT FOR CERTAIN INSTITUTIONS AUTHORIZED

7464. Treasurer authorized to borrow and execute notes. Whereas certain of the educational and charitable institutions of the state are inadequate to meet the demands of the people of the state, and it is required by the public interests that these institutions be permanently enlarged; and

Whereas the institutions for whose permanent enlargement bonds were authorized to be issued under article 8 of this chapter are now in great need of the amount of the bonds in said article apportioned to them, therefore, for the purposes recited the state treasurer is hereby authorized, empowered, and directed, by and with the advice of the governor and his council of state, to borrow for a period of two years and at the lowest rate of interest obtainable, the sum of nine hundred and forty-six thousand dollars; and he is further authorized and empowered to execute in the name of the state of North Carolina and deliver notes for the money herein authorized to be borrowed, and to renew the same from time to time, if necessary, for a total period of not longer than two years from the date of the original notes.

1919, c. 328, s. 1.

7465. Disposition of proceeds. The proceeds derived from the sale of such notes are appropriated and set apart for the permanent enlargement and improvement of the following educational and charitable institutions of the state and in the following amounts, to wit:

For the Caswell training school, three hundred thousand dollars.

For the state hospital at Raleigh, eighty thousand dollars.

For the agricultural and technical college for the negroes, at Greensboro, six thousand dollars.

For the state normal for the negroes, at Elizabeth City, thirty thousand dollars.

For the state normal for the negroes, at Fayetteville, thirty thousand dollars.

For the state sanatorium for tuberculosis, one hundred thousand dollars.

For the orthopedic hospital, twenty thousand dollars.

For the erection and construction of a suitable and adequate building for the agricultural department on the lot now owned by it in the city of Raleigh, two hundred and fifty thousand dollars.

For the erection of suitable buildings for the state prison on the state farm or other place selected, one hundred thousand dollars.

For the Slater normal and industrial school at Winston-Salem, thirty thousand dollars: Provided, that of this amount only the sum of twenty thousand dollars shall be immediately available, and the remainder, ten thousand dollars, shall become available only when the said Slater normal and industrial school shall raise from other sources and have available the sum of ten thousand dollars, which fact shall be certified to the state treasurer by the president and treasurer of said school, verified before a notary public. Out of said sum the trustees are authorized to buy such additional land and buildings for said school as may, in their judgment, be deemed necessary, not exceeding fifteen thousand dollars.

1919, c. 328, s. 2.

7466. Treasurer may borrow in anticipation of certain bonds. The state treasurer is further authorized, empowered, and directed to borrow, by and with the advice of the governor and his council of state, in anticipation of the bonds authorized to be issued under article 8 of this chapter, and for the institutions therein named, but, however, not exceeding the total amount of the bonds authorized thereunder, such sums of money from time to time as the trustees or directors of the said institutions therein named may need and shall be approved by the state building commission; the said sums of money to be borrowed at the lowest rate of interest obtainable, and the state treasurer is authorized and empowered to execute in the name of the state of North Carolina and deliver notes for the money in this section authorized to be borrowed, and to renew the same from time to time, if necessary, until the bonds authorized to be issued under article 8 of this chapter are issued and sold as directed; and the said treasurer is directed to pay the notes issued pursuant to the authority conferred upon him in this section with the proceeds of the sale of said bonds as fast as and as soon as the said bonds are sold.

1919, c. 328, s. 5.

7467. Exemption from taxation; investment by fiduciaries. Any and all notes issued by the state treasurer under the provisions of this article shall be exempt from all state, county, and municipal taxation or assessment, direct or indirect, general or special, whether imposed for purposes of general revenue or otherwise, and the interest paid thereon shall not be subject to taxation as for income, nor shall said notes be subject to taxation when constituting a part of the surplus of any bank, trust company, or other corporation; and it shall be lawful for all executors, administrators, guardians, and fiduciaries generally to invest in said notes.

1919, c. 328, s. 6.

7468. Construction from proceeds under supervision of state building commission. All buildings built, improved, or constructed with the proceeds of the

money herein authorized to be borrowed for and on account of the institutions named shall be constructed and built by and under the supervision of the state building commission.

1919, c. 328, s. 3.

7469. Liquidation of notes. The state treasurer is further authorized and directed to apply the surplus in the treasury not otherwise appropriated at the end of the fiscal year of one thousand nine hundred and twenty to the liquidation, payment, and settlement of the notes herein in section 7464 authorized to be issued to the amount the same will pay.

1919, c. 328, s. 4.

7470. State prison converted to hospital from proceeds of hospital bonds. The directors of the state hospitals are authorized to use and expend, under the supervision and direction of the state building commission, as much of the proceeds of the bonds apportioned to the state hospital at Raleigh and the state hospital at Morganton, under article 8 of this chapter, as may be required to make available and suitable the property and buildings of the state prison at Raleigh, which have been, by an act of the general assembly of one thousand nine hundred and nineteen, directed to be turned over to and incorporated with the property of the state hospital at Raleigh.

1919, c. 328, s. 7.

7471. All construction as near fireproof as practicable; exception. All buildings improved, constructed, or built for any of the institutions of the state from the proceeds of the sale of bonds authorized to be issued under article 8 of this chapter, or from the money borrowed under the provisions of this article, shall be improved, built, and constructed as near fireproof as in the judgment of the state building commission is practicable or possible, except the buildings erected by the state prison; and the approval by the state building commission of the plans furnished to it by the state institutions shall be final and conclusive.

1919, c. 328, s. 9.

7472. Sale of state blind institution property. The governor and his council of state are hereby authorized, empowered, and directed to sell for the highest obtainable price the square and the buildings thereon now occupied in the city of Raleigh by the state blind institution, and the proceeds of such sale shall be paid to the state treasurer for the use of the blind institution for the completion of its new buildings and equipment thereof. Until such sale can be made, the state treasurer is authorized and empowered to borrow a sum not exceeding one hundred and fifty thousand dollars at the lowest obtainable rate of interest, and the said state treasurer is authorized to execute in the name of the state of North Carolina and deliver notes for the money herein authorized to be borrowed, and to renew the same from time to time, if necessary, until the said square and buildings are sold and paid for, when the said notes shall be discharged and paid for from such proceeds; and the surplus of said proceeds shall be placed to the credit of said blind institution.

1919, c. 328, s. 10.

For state bonds for county road loans, see section 3600. For state bonds for state home and industrial school for girls and women, see sections 7340-7343.

CHAPTER 126

STATE DEPARTMENTS, INSTITUTIONS, AND COMMISSIONS

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ART. 1. STATE BUDGET COMMISSION

7473. State appropriations and expenditures. From and after the convening of the general assembly of nineteen hundred and twenty-one, money shall be appropriated in the manner hereinafter set out; and from and after the adjournment of the general assembly of nineteen hundred and twenty-one money shall be disbursed from the state treasury in the manner herein set out, and in no other way.

1919, c. 38, s. 1.

7474. Budget commission created; personnel; vacancies. There is hereby created a commission to be known as the budget commission, to be composed at all times of the governor of the state, who shall be chairman of the commission, and of the chairmen of the committees on appropriations and on finance of the house of representatives and of the senate; the commission to have all the powers and duties conferred by this article from and after the adjournment of the general assembly of one thousand nine hundred and nineteen. In case of a vacancy in the commission on account of death, resignation or inability to serve of any of the last four named members, the next ranking member of the committee on appropriations or finance, as the case may be, shall succeed to membership on the commission.

1919, c. 38, s. 2.

7475. State departments, institutions, etc., to report estimates of amounts needed. On or before the first day of November biennially in the even-numbered years each of the several state departments, bureaus, divisions, officers, commissions, institutions, and other agencies and undertakings receiving or asking financial aid from the state, or receiving funds under authority of any general law of the state, shall report to the budget commission, on official estimate blanks furnished for such purpose, an estimate in itemized form showing the amount needed for each year of the ensuing biennial period beginning with the first day of April thereafter. The official estimate blanks which must be used in making these reports shall be furnished by the budget commission, shall be uniform, and shall clearly designate the kind of information to be given thereon.

1919, c. 38, s. 3.

7476. State auditor to estimate needs of general assembly and judiciary. On or before the first day of November biennially in the even-numbered years the state auditor shall furnish to the budget commission an estimate of the financial needs of the general assembly, itemized in strict accordance with the budget classification adopted by the budget commission, and certified and approved by the presiding officer of each house, for each year of the ensuing biennial period beginning with the first day of April thereafter; and an estimate of the financial needs of the judiciary, as provided by law, itemized in strict accordance with the budget classification adopted by the budget commission, for each year of the ensuing biennial period beginning with the first day of April thereafter. The state auditor shall transmit to the budget commission with these estimates full and detailed explanation of all increases or decreases.

1919, c. 38, s. 4.

7477. State auditor to furnish certain statements. On or before the first day of November biennially in the even-numbered years the state auditor shall furnish to the budget commission the following statements, classified and itemized in strict accordance with the budget classification adopted by the budget commission:

(1) A statement showing the balance standing to the credit of the several appropriations for each department, bureau, division, officer, board, commission or other agency or undertaking of the state at the end of the last preceding appropriation year.

(2) A statement showing the monthly expenditures and revenues for each appropriation account, and the total monthly expenditures and revenues from all the appropriation accounts, including special and all other appropriations, in the twelve months of the last preceding appropriation year.

(3) A statement showing the annual expenditures in each appropriation account, and the revenues from all sources, including expenditures and revenues from special and all other appropriations, for each year of the last two appropriation years, with a separate column showing the increase or decrease for each item.

(4) An itemized and complete financial balance sheet for the state at the close of the last preceding fiscal year.

(5) Such other statements as the budget commission shall request.

1919, c. 38, s. 5.

7478. All agencies of state to furnish any information required. The departments, bureaus, divisions, officers, boards, commissions, institutions, or other agencies or undertakings of the state, upon request, shall immediately furnish to the budget commission, in such form as it may require, any information desired by it in relation to their respective affairs or activities.

1919, c. 38, s. 6.

7479. Public hearings; heads of state agencies to attend. The budget commission shall provide for public hearings on any and all estimates to be included in the budget, which shall be held during the month of November biennially in the even-numbered years. The budget commission shall require the attendance at

these hearings of the heads or responsible representatives of all state departments, bureaus, divisions, officers, boards, commissions, institutions, or other agencies or undertakings receiving or asking financial aid from the state.

1919, c. 38, s. 7.

7480. Commission to make biennial survey of all state agencies. On or before the fifteenth day of December biennially in the even-numbered years the budget commission shall have completed a careful survey of all the departments, bureaus, divisions, officers, boards, commissions, institutions, and other agencies and undertakings of the state, through which it shall be in possession of the working knowledge upon which to base its recommendation to the general assembly.

1919, c. 38, s. 8.

7481. Budget submitted, when; certain statements to accompany. Within five days after the beginning of each regular session of the general assembly the budget commission shall submit to the presiding officer of each house printed copies of a budget, based upon its own conclusions and judgment, containing a complete and itemized plan of all proposed expenditures for each state department, bureau, division, officer, board, commission, institution, or other agency or undertaking, classified by function, character and object, and of estimated revenues and borrowings for each year in the ensuing biennial period beginning with the first day of April thereafter. Opposite each item of the proposed expenditures the budget shall show in separate parallel columns the amount appropriated for the last preceding appropriation year, for the current appropriation year, and the increase or decrease.

The budget commission shall accompany the budget with—

(1) A statement of the revenues and expenditures for each of the two appropriation years next preceding, classified and itemized in accordance with the official budget classification adopted by the budget commission.

(2) A statement of the current assets, liabilities, reserves and surplus or deficit of the state.

(3) A statement of the debts and funds of the state.

(4) A statement showing the budget commission's itemized estimates of the condition of the state treasury as of the beginning and end of each of the next two appropriation years.

(5) An itemized and complete financial balance sheet for the state at the close of the last preceding fiscal year.

(6) A general survey of the state's financial and natural resources, with a review of the general economic, industrial and commercial condition of the state.

1919, c. 38, s. 9.

7482. Tentative appropriation bill submitted. The budget commission shall also submit to the presiding officer of each house of the general assembly, at the same time it submits its budget, copies of a tentative bill for all proposed appropriations of the budget, clearly itemized and properly classified, for each year in the ensuing biennial appropriation period, which shall be known as "The Budget Bill."

1919, c. 38, s. 10.

7483. Joint committee on appropriations to consider budget. The appropriations committees of the house of representatives and of the senate shall sit jointly in open sessions while considering the budget, and shall begin such joint meetings within five days after the budget has been submitted to the general assembly by the budget commission. This joint committee may cause the attendance of heads or responsible representatives of the departments, institutions and all other agencies of the state to furnish such information and answer such questions as the joint committee shall require; and to these sessions shall be admitted, with the right to be heard, all persons interested in the estimates under consideration. The budget commission, or its representatives, shall have the right to sit at these public hearings and be heard on all matters coming before the joint committee.
1919, c. 38, s. 11.

7484. General assembly may increase or decrease items; special appropriations. The general assembly may increase or decrease items in the budget bill as it may deem to be in the public interest, but neither house shall consider further or special appropriations, except in case of an emergency, which fact shall be clearly stated in the bill therefor, until the budget bill shall have been finally acted upon by both houses; and no bill carrying an appropriation shall be thereafter passed by the general assembly unless the money to pay the same shall be in the treasury, or unless a special tax for that purpose is levied in the bill making the appropriation.
1919, c. 38, s. 12.

7485. Compensation of members of budget commission; assistants. The members of the budget commission other than the chairman shall receive as compensation for their services ten dollars per day for the number of days actually engaged in the performance of duties proposed by this article and their actual traveling expenses, to be audited and approved by the state auditor. The budget commission shall employ competent budget assistants and such special help as it may require to carry out the provisions of this article, and shall fix the compensation of such persons, to be paid by the state treasurer upon warrant of the state auditor.
1919, c. 38, s. 13.

7486. Laws requiring reports of similar character repealed. All laws requiring reports to be made by state departments, bureaus, divisions, officers, boards, commissions, and institutions to the general assembly, the legislative reference librarian, or to any other state department, of a similar character to the reports herein required to be made to the budget commission, or any laws in conflict with or inconsistent with this article, are hereby repealed.
1919, c. 38, s. 14.

ART. 2. STATE BUILDING COMMISSION

7487. Appointment and organization of the commission. The governor of the state is directed, authorized, and empowered to appoint a state building commission, to be composed of five members, three of whom shall be members of the

majority political party of the state, and the state building commission shall organize in the city of Raleigh by electing one of its members chairman and one of its members secretary.

1919, c. 303.

7488. Duties of the commission. The building commission shall have entire supervision, direction, and control of the distribution of the proceeds of the bonds under article eight of the chapter on State Debt directed to be issued to the several institutions and purposes therein named, and to the amount to each institution and purpose therein specified, and shall have the supervision of the buildings erected by the several institutions therein named and for the purposes therein specified, except the sum of five hundred thousand dollars therein authorized to be issued to the state board of education for the purpose of aiding in the building of the public schools of the state, and except further, that the committee on public buildings and grounds shall select and purchase, if necessary, the site for the state's storage warehouse and shall have supervision and control of the construction of the state's storage warehouse.

1919, c. 303.

7489. Control of all state building construction. The state building commission shall also have entire supervision, direction and control of any and all buildings hereafter to be constructed by the state or any institution under state control or management, and entire supervision and control of any alterations, repairs, or improvement of a permanent nature to be made upon any building now or hereafter to be constructed; the purpose of this article being to confer upon the state building commission power and authority to supervise, control, and direct all building operations of a permanent nature which shall be done by the state or by any institutions under the control or management of the state.

1919, c. 303.

NOTE.—For fireproof construction as near as possible of certain buildings, see State Debt, s. 7471.

7490. Vacancies; meetings of the commission. In the event of any vacancy occurring in the membership of the state building commission the governor of the state shall fill such vacancy from that political party represented by the retiring member of the commission; the commission shall meet as often as the business entrusted to them shall require, and the meetings may be held in the city of Raleigh or any of the state's institutions.

1919, c. 303.

7491. Expenses of commission. The commission shall be paid annually its necessary expenses out of proceeds of the sale of the bonds authorized under article 8 of chapter State Debt, when engaged upon work connected with any of the institutions specifically referred to in article 8 of chapter State Debt, and when engaged upon other work of the state, out of the funds of the state treasury, upon itemized statements duly verified by the said members and approved by the governor of the state, who, upon approval, is authorized and directed to draw vouchers for such expenses.

1919, c. 303.

7492. State architect; plans and specifications submitted to commission. Before any building shall be erected at any of the state's institutions, and before any permanent improvement shall be made to the state's institutions, the building commission shall employ a competent architect, to be known as the state architect, whose duty it shall be to draw and submit plans and specifications for any public building to be erected, or, where the commission shall deem necessary, plans and specifications for any permanent change, additions, or improvements to state buildings; and when approved by the commission, advertisement shall be made for the contract therefor and sealed bids invited upon such terms and conditions as the state building commission may prescribe.

1919, c. 303.

7493. Compensation of state architect. The state architect shall be paid a salary of five thousand dollars per annum, which shall be in lieu of all commissions or other compensations, and such amount not exceeding seven thousand five hundred dollars as the commission may think necessary for additional help and expenses incurred in work on plans and specifications for state buildings, including necessary expenses for office rent and equipment. The salary shall be paid monthly when approved by the chairman or secretary of the commission, and be paid on a warrant of the auditor by the state treasurer out of such funds in the treasury as are not otherwise appropriated: Provided, that where the work done is for plans and specifications on buildings to be erected, repaired, or altered under article eight of the chapter on State Debt, then out of funds appropriated therein; and the commission may employ inspectors on such buildings, who may be paid out of the funds appropriated for such buildings. The architect herein authorized to be selected by the state building commission shall not be required to have license provided for by the laws regulating the practice of architecture in this state.

1919, c. 303.

7494. Annual report of the commission. It shall be the duty of the building commission to make annual reports to the governor of the expenditure of the proceeds of the sale of the bonds directed to be issued by article 8 of the chapter State Debt, which reports shall be transmitted by the governor to the general assembly. Each report shall name the institutions at which any part of such money has been expended during the preceding year, and shall set forth in detail all buildings erected, or if incomplete and in process of erection, then the progress made thereon, and the cost and character of the construction of all such buildings.

1917, c. 154, s. 9.

ART. 3. COÖPERATIVE PURCHASING COMMITTEE FOR CERTAIN INSTITUTIONS

7495. Creation, organization, and meetings. There is hereby created a coöperative purchasing committee, hereinafter called "the committee," which shall consist of the superintendents of the state hospitals for the insane at Morganton, Raleigh, and Goldsboro, and the superintendents of the school for the deaf at Morganton, the school for the blind at Raleigh, and the Caswell training school

at Kinston, and the presidents of the university of North Carolina, the North Carolina state college of agriculture and engineering, the state normal and industrial college for women at Greensboro, and the East Carolina training school at Greenville. The committee shall organize by the election of one of its members as chairman and another as secretary. The chairman shall preside at all meetings of the committee, and the secretary shall keep minutes of its proceedings. In the absence of the chairman, some other member of the committee may be selected to act in his stead during such absence. Three members of the committee shall constitute a quorum for the transaction of business. The committee shall meet at least four times each year, and may, in its discretion, meet as often as once each month at such place and time as may be designated by the chairman thereof.

1917, c. 150, s. 2; 1919, c. 298.

7496. Quarterly and annual reports. The committee shall make quarterly reports to the governor of the state, setting forth the transactions of the committee, the supplies purchased, the price, quantity and quality thereof, the total expenditures for each quarter, and the quantity and cost of all supplies purchased for and on behalf of each institution. The committee shall publish annually a report setting out in detail, with proper and sufficient tables and explanations, its transactions for the year ending November thirtieth of each year.

1917, c. 150, s. 2.

7497. Rules and regulations; clerical assistance. The committee is authorized to make such rules and regulations for the economical purchase of all the supplies for each of the institutions named in section 7495 as in its judgment may be deemed necessary to effectuate an economical administration of this article. It is authorized also to make provisions for the employment of such clerical assistance as may be necessary to carry this article into effect.

1917, c. 150, s. 3.

7498. Office; location and equipment. The office of the committee shall be located in the city of Raleigh. The board of public buildings and grounds is authorized and directed to supply and equip sufficient office room for the proper administration of this article.

1917, c. 150, s. 4.

7499. Institutions to report to committee. For the purpose of obtaining comparative information, the following institutions are required to report quarterly to the committee the amount of supplies purchased, including in a general way staple articles of diet, coal and other fuel and other institutional equipment: state's prison, East Carolina teachers' training school, the three negro normal schools, the state college of agriculture and engineering, the various state departments, the university, the normal and industrial college, the agricultural and technical college, the Stonewall Jackson training school, the Appalachian training school, and the Cullowhee normal school.

1917, c. 150, s. 5.

7500. Division of expenses among institutions. For the purpose of meeting the expenses necessary to the enforcement of this article, each of the institutions named in section 7495 shall pay its pro rata part, which shall be determined by the amount of purchases made on its behalf each year.

1917, c. 150, s. 7.

7501. Purchases for other institutions regulated. Any other state institutions may make application to the committee and request it to purchase the necessary supplies for them or any part thereof; and it shall be the duty of the committee to make such purchases for and on behalf of such institutions, and to see to the proper delivery of supplies so furnished in the same manner as if such institutions were included in this article. If any state institution not named in section 7495 shall request the purchase of supplies for it, as provided herein, it shall pay its pro rata part of the expenses incident to the enforcement of this article, in accordance with the provisions of section 7500.

1917, c. 150, s. 6.

7502. Books to be kept. The committee shall keep a full and complete set of books, which shall show in detail all transactions with and purchases for each of the institutions which are named in section 7495, or which avail themselves of the privileges of this article in accordance with the preceding section.

1917, c. 150, s. 6.

ART. 4. STATE RECONSTRUCTION COMMISSION

7503. Commission created. A commission is hereby created to be known as the state reconstruction commission, consisting of twenty-five men from the state at large, and representing as far as practicable all the various industries and employments of the state. The members of the said commission shall be appointed by the governor, who shall be ex officio chairman of the commission; and the said commission shall have the power to elect an executive chairman or secretary to carry on the details of the work.

1919, c. 261, s. 1.

7504. Duties. It shall be the duty of such commission to make investigations and to report in reference to the industrial, commercial, economic, sociological, and military needs and requirements of the state which have been produced by the world war and the readjustment of the state to conditions of peace; to take such advisory measures as it may deem fit in reference to such matters; to consult with the several state and federal departments and such civic organizations as may offer information or recommendations in reference to such matters; to make investigation and suggest plans for the coördination and coöperation of the resources of the state during the period of adjustment after such war, and to make investigations and recommendations on all matters requiring the coöperation of federal and state governments, and to plan methods of coöperating with the federal authorities in devising and carrying out national policies during the period of war reconstruction.

1919, c. 261, s. 2.

7505. Reports. This commission shall make written reports to the governor at such times and upon such subjects as in its discretion it may deem proper, and publish same in the newspapers of the state.

1919, c. 261, s. 3.

7506. Appropriation. The members of the commission shall serve without compensation; but a sum of not exceeding five hundred dollars per annum for the years one thousand nine hundred and nineteen and one thousand nine hundred and twenty be and the same is hereby appropriated out of the public funds of the state to be used for the payment of postage and clerical assistance in the carrying out of the work of the commission; such sum to be paid upon warrant of the state auditor by the state treasurer, upon request of the executive chairman or secretary of the said commission.

1919, c. 261, s. 4.

ART. 5. SOLDIER SETTLEMENT BOARD

7507. Object of article. The object of this article is, in recognition of military services, to provide useful employment and rural homes for soldiers, sailors, marines, and others who have served with the armed forces of the United States in the European war or other wars of the United States, including former American citizens who served in allied armies against central powers and have been repatriated, and who have been honorably discharged; and to accomplish such purpose by coöperation with the agencies of the United States engaged in work of a similar character. This article may be cited as "The North Carolina Soldier Settlement Act."

1919, c. 266, s. 1.

7508. Soldier settlement board created. A soldier settlement board is hereby created, composed of three members to be appointed by the governor, one of whom shall be chairman, and whose terms of service shall be as follows: one for two years, one for four years, and one for six years; and thereafter, on the expiration of their terms, for a period of six years, and until their successors have been appointed and qualified. The attorney-general shall be the legal adviser of the board and represent the board in any suits or actions which may arise out of the discharge of its duties.

1919, c. 266, s. 2.

7509. Coöperation with federal agencies. The board shall satisfy itself of the practicability of each project to be undertaken hereunder, utilizing all state agencies to such end. Projects may be undertaken in coöperation with the United States, involving the reclamation of the lands within this state by drainage, irrigation, and removal of trees and stumps, the building of levees, sea walls, necessary roads, land leveling, fertilization, sanitation, or involving such other means as may be found practicable and desirable to make the land suitable for agricultural purposes and rural homes. The board may acquire, in the name of the state, by purchase, gift, all lands and other property needed for the purposes hereof, and may take title in trust. With the consent of the coöperating federal agencies, the board may sell any land or other property acquired hereunder

found not to be required for any project. The board may also utilize all lands of the state for the purposes of this article: Provided, that nothing in this section contained shall be construed to repeal any law relating to the price of state lands. The periods during which payment for state lands may be made and the rates of interest under existing statutory law may be modified by the board, if deemed advisable in order properly to cooperate with federal agencies.

1919, c. 266, s. 3.

7510. Power to contract with federal government and with other states. The board is authorized to contract with the United States pursuant to acts of congress and the rules and regulations thereunder for soldier settlement and related purposes. For the purposes of general cooperation with the federal government hereunder, the board may also contract with other states, and with municipal, quasi-municipal, and public corporations and private corporations and individuals.

1919, c. 266, s. 4.

7511. Powers under contract with federal government. The board may also, under contract with the United States, undertake any work of farm improvement, subdivision of the land, supervision of settlement, the selection of settlers, the agricultural training of prospective settlers, the supervision of short-term loans, the rejection of applicants for allotments, the collection of moneys, the operation and maintenance of the projects undertaken, and may perform such other acts as may be necessary to effectuate full cooperation with federal agencies.

1919, c. 266, s. 5.

7512. Additional powers; proceeds of operations. The board may also lease or assent to the lease of any lands pending receipt of application for the purchase thereof; may dedicate lands for schools, churches, roads, cemeteries, and other public purposes; may establish, develop, and open for sale such town-sites as may be desirable and provided by contract with the United States. The proceeds of all operations under this act shall be covered into the North Carolina soldier settlement fund.

1919, c. 266, s. 6.

7513. State reimbursable as provided for federal government. The board, in cooperation with the United States, is authorized to obtain suitable security by lien, by cooperation with public corporations or otherwise for the reimbursement of moneys expended hereunder by the United States, or by the state or by both jointly, or otherwise. All moneys expended by the state upon any project undertaken shall be reimbursable to the state in manner similar and to the same extent that moneys disbursed by the United States for cooperation with the state shall be reimbursable, and with the same interest, if any, upon such plan of amortization or other method or reimbursement as may be agreed upon pursuant to such acts of congress.

1919, c. 266, s. 7.

7514. State lands and lands acquired subject to taxation. State lands utilized hereunder and lands acquired pursuant to this article shall be subject to state

and local taxation and assessment for improvement purposes from the date of the execution of the contract for the purchase thereof by settlers upon any project undertaken hereunder. If the contracting purchaser shall fail to pay such taxes and assessments, the same may be paid from the fund hereby provided and charged to the purchaser, with interest at the rate of ten per cent per annum from the date of payment.

1919, c. 266, s. 8.

7515. Reports of board. The board shall make annual report to the governor, with a full statement of its operations and the results of its investigations and experience resulting from operations under this article, together with recommendations for legislation, and shall furnish a copy of its report to the secretary of the interior.

1919, c. 266, s. 9.

7516. Board to make necessary rules and regulations. The board is hereby authorized to perform such acts and make such rules and regulations as it may deem necessary and proper to carry this article into full force and effect.

1919, c. 266, s. 10.

ART. 6. OFFICERS OF STATE INSTITUTIONS

7517. Secretary to be elected from directors. The board of directors of the various state institutions shall elect one of their number as secretary, who shall act as such at all regular or special meetings of such boards.

1907, c. 883, s. 1.

NOTE.—The state treasurer is ex officio treasurer of state institutions. See chapter State Officers, article Treasurer.

7518. Directors to elect officers and employees. All officers and employees of the various state institutions who hold elective positions shall be nominated and elected by the board of directors of the respective institutions.

1907, c. 883, s. 3.

7519. Director not to be elected to position under board. It shall be unlawful for any board of directors, board of trustees or other governing body of any of the various state institutions (penal, charitable, or otherwise) to appoint or elect any person who may be or has been at any time within six months a member of such board of directors, board of trustees, or other governing body, to any position in the institution, which position may be under the control of such board of directors, board of trustees, or other governing body.

1909, c. 831.

7520. Superintendents to be within call of board meetings. The superintendent of each of the various state institutions shall be present on the premises of his institution and within the call of the board of directors during all regular or special meetings of the board, and shall respond to all calls of the board for any information which it may wish at his hands.

1907, c. 883, s. 1.

7521. Trading by interested officials forbidden. The directors, stewards, and superintendents of the state institutions shall not trade directly or indirectly with or among themselves, or with any concern in which they are interested, for any supplies needed by any such institutions.

1907, c. 883, s. 2.

ART. 7. VARIOUS POWERS AND REGULATIONS

7522. State institutions may exercise eminent domain. Whenever the directors or managers of any state institution find it necessary to acquire lands in order to carry out the purposes of the institution, or to acquire lands, rights of way, or easements for the purposes of obtaining and protecting water supplies, or for constructing and maintaining dams, reservoirs, standpipes, pipe lines, flumes, or conduits for water-supply purposes, and are unable to purchase the same from the owners at a reasonable price, or are unable to obtain a good and sufficient title therefor by purchase from the owners, then such state institution may exercise the right of eminent domain and acquire any such lands, rights of way, or easements necessary for the aforesaid purposes by condemnation in the manner prescribed by law under the chapter Eminent Domain.

Rev., s. 3062; 1917, cc. 51, 132.

7523. Entry on land to lay water pipes. For the purpose of providing water supplies, the directors or other lawful managers of any public institution of the state may enter upon the lands through which they may desire to conduct their pipes for such purpose, and lay them under ground; and they, at all times, shall have the right to enter upon such lands for the purpose of keeping the water line in repair and do all things necessary to that end.

Rev., s. 3061; 1893, c. 63, s. 1; 1911, c. 62, s. 26.

7524. Governor to execute deeds of state lands held for institutions. The governor of the state is hereby authorized and empowered to execute a deed under the great seal of the state to any lands the title to which is now vested in the state, for the use of any state institution, upon application of the trustees or directors of such institution. The application shall show such conveyance is for the best interests of the institution, and shall be approved by the council of state.

1917, c. 129.

7525. Grant of easements to public-service corporations. The directors of the various state institutions are authorized and empowered to grant privileges and easements to individuals or companies to run telegraph, telephone, or power transmission lines over lands belonging to such institutions, when in their judgment it is right and proper to do so, and subject to such terms and conditions as they may impose, and subject in each case to the approval of the attorney-general of the state.

1909, c. 484.

7526. Injury to water supply misdemeanor. If any person shall in any way intentionally or maliciously damage or obstruct any water line of any public

institution, or in any way contaminate or render the water impure or injurious, he shall be guilty of a misdemeanor and shall be fined or imprisoned in the discretion of the court.

Rev., s. 3458; 1893, c. 63, s. 3.

7527. Keeping swine near state institutions; penalty. On the petition of a majority of the legal voters living within a radius of one-quarter of a mile of the administrative building of any state educational or charitable institution, it shall be unlawful for any person to keep swine or swine pens within such radius of one-quarter of a mile. Any person violating this section shall be guilty of a misdemeanor and shall be subject to a fine of not less than ten nor more than fifty dollars.

1909, c. 706.

7528. Expenditures for departments and institutions; accounting and warrants. All expenditures of any character allowed by the general assembly in making appropriations and not covered in the appropriations named shall be charged against the department or institution for which the expense is incurred, and the state auditor's warrant shall be made to show clearly for what purpose the expenditure is made. The warrant shall be charged against the department or institution, thereby showing the total amount expended for the maintenance and expenses of such department or institution.

1917, c. 289.

7529. Institutions to file monthly statements with auditor. On the fifteenth of each month it shall be the duty of the head of each state institution to prepare an itemized statement of all the disbursements of such institution for the preceding month, and file the same with the state auditor on blanks to be prepared and furnished to him by the auditor.

1911, c. 99.

7530. Certain institutions to report to governor and general assembly. It shall be the duty of the boards of directors, managers, or trustees of the several state institutions for the insane, or the several institutions for the deaf, dumb, and blind, and of the state prison to submit their respective reports to the governor, to be transmitted by him with his message to the general assembly.

Rev., s. 5373; 1883, c. 60, ss. 2, 4.

NOTE.—For further provision as to reports from institutions and departments generally, see s. 7475. As to reports from state school for blind and deaf, see s. 5882.

7531. Reports of departments and institutions; investigations and audits. All state departments and state institutions shall make reports to the governor from time to time as may be required by him, and the governor is empowered to have all departments of the state government and state institutions examined and audited from time to time, and shall employ such experts to make audits and examinations and to analyze the reports of such institutions and departments as he may deem to be necessary.

1917, c. 58, s. 7.

NOTE.—For investigations by board of internal improvements, see s. 6553.

7532. Special investigations. At any time, upon complaint made to him or upon his own motion, the governor may appoint a special commission to investigate any state department or state institution, which commission shall have power to subpoena witnesses, require the production of books and papers, and to do all things necessary to a full and thorough investigation, and shall submit its findings to the governor. The members of such special commission shall, while engaged in the performance of their duties, receive their actual expenses and a per diem of four dollars.

1917, c. 58, s. 8.

7533. Commission to determine scope of reports. There is hereby established a commission to be composed of the governor, the attorney-general, and the commissioner of labor and printing, the duty of which commission shall be to confer with the various departments and to prescribe the scope of the matter to be published in any report now prescribed, required, or permitted, to the end that unnecessary matter may be eliminated.

1917, c. 202, s. 2.

7534. Reports of departments to be printed biennially. All laws requiring reports to be made, published, and printed by any department oftener than once in two years are hereby amended to the extent that the report of any department is required or permitted to be printed only once in any biennial period: Provided, that this section shall not apply to the report of the state auditor and of the state treasurer.

1917, c. 202, s. 1.

CHAPTER 127

STATE FLAG

SEC.

7535. State flag.

7536. State motto.

7537. Flags to be displayed on public buildings and institutions.

7538. Flags to be displayed at county courthouses.

7539. Flags to conform to law.

7535. State flag. The flag of North Carolina shall consist of a blue union, containing in the center thereof a white star with the letter "N" in gilt on the left and the letter "C" in gilt on the right of said star, the circle containing the same to be one-third the width of said union. The fly of the flag shall consist of two equally proportioned bars, the upper bar to be red, the lower bar to be white; the length of the bars horizontally shall be equal to the perpendicular length of the union, and the total length of the flag shall be one-third more than its width. Above the star in the center of the union there shall be a gilt scroll in semi-circular form, containing in black letters this inscription: "May 20th, 1775," and below the star there shall be a similar scroll containing in black letters the inscription: "April 12th, 1776."

Rev., s. 5321; 1885, c. 291.

7536. State motto. The words "esse quam videri" are hereby adopted as the motto of this state, and as such shall be engraved on the great seal of North Carolina and likewise at the foot of the coat-of-arms of the state as a part thereof. On the coat-of-arms, in addition to the motto, at the bottom, there shall be inscribed at the top the words, "May 20th, 1775."

Rev., s. 5320; 1893, c. 145.

NOTE.—For great seal and coat-of-arms, see State Officers, article Governor.

7537. Flags to be displayed on public buildings and institutions. The board of trustees or managers of the several state institutions and public buildings shall provide a North Carolina flag, of such dimensions and material as they may deem best, and the same shall be displayed from a staff upon the top of each and every such building, at all times except during inclement weather, and upon the death of any state officer or any prominent citizen the flag shall be put at half-mast until the burial of such person has taken place.

1907, c. 838, s. 2.

7538. Flags to be displayed at county courthouses. The board of county commissioners of the several counties in this state shall likewise authorize the procuring of a North Carolina flag, to be displayed either on a staff upon the top or draped behind the judge's stand, in each and every courthouse in the state, and

that the state flag shall be displayed at each and every term of court held, and on such other public occasions as the commissioners may deem proper.

1907, c. 838, s. 3.

7539. Flags to conform to law. No state flag shall be allowed in or over any building here mentioned unless such flag conforms to the description of the state flag contained in this chapter.

1907, c. 938, s. 4.

NOTE.—See Crimes, s. 4500.

CHAPTER 128

STATE LANDS

SUBCHAPTER I. ENTRIES AND GRANTS

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SUBCHAPTER I. ENTRIES AND GRANTS

ART. 1. LANDS SUBJECT TO GRANT

7540. Vacant lands; exceptions. All vacant and unappropriated lands belonging to the state shall be subject to entry by any citizen thereof, in the manner hereinafter provided, except—

1. Lands covered by navigable waters.

2. Lands covered by the waters of any lake, or which, though now covered, may hereafter be gained therefrom by the recession, draining, or diminution of such waters, or have been so gained heretofore and not lawfully entered.

3. Marsh or swamp land, where the quantity of land in any one marsh or swamp exceeds two thousand acres, or where, if of less quantity, the same has been surveyed by the state, or by the state board of education, with a view to draining and reclaiming the same.

Rev., s. 1693; Code, s. 2751; R. C., c. 42, s. 1; 1854-5, c. 21.

For special act excepting from entry lands covered by Little river in Richmond and Montgomery counties, see 1907, chapter 433.

Land covered by navigable waters not subject of grant: *Bell v. Smith*, 171-116; *State v. Young*, 138-572; *State v. Twiford*, 136-603; *Holley v. Smith*, 130-86; *State v. Spencer*, 114-777; *Bond v. Wool*, 107-139; *Hodges v. Williams*, 95-331; *Skinner v. Hettrick*, 73-53; *State v. Glen*, 52-325; *Ward v. Willis*, 51-183; *Collins v. Benbury*, 27-126; *Tatum v. Sawyer*, 9-226. But see section 7543. "Navigable waters" defined: *State v. Twiford*, 136-607; *State v. Baum*, 128-600; *Mfg. Co. v. R. R.*, 117-579; *State v. Eason*, 114-787; *State v. Narrows Island Club*, 100-477; *Hodges v. Williams*, 95-331; *State v. Glen*, 52-325; *Collins v. Benbury*, 25-277; *Wilson v. Forbes*, 13-30.

Swamp lands are not subject to entry, except as specified in this section: *Board of Education v. Lumber Co.*, 158-314; *Beer v. Lumber Co.*, 170-337.

When lands are granted they are no longer subject to entry as "vacant and unappropriated lands": *Walker v. Parker*, 169-150; *Berry v. Lumber Co.*, 141-386; *Lumber Co. v. Coffey*, 144-560; *Stewart v. Keener*, 131-487; *Dew v. Pyke*, 145-300; *Rowe v. Lumber Co.*, 129-97; *Janney v. Blackwell*, 138-437; *Newton v. Brown*, 134-442; *Midgett v. Midgett*, 129-21; *State v. Bevers*, 86-588; *Hoover v. Thomas*, 61-184; *Harry v. Graham*, 51-462; *Lovinggood v. Burgess*, 44-408; *Stannmire v. Powell*, 35-312; *O'Kelly v. Clayton*, 19-249; *Featherston v. Mills*, 15-596; *Strothers v. Cathey*, 5-164; *University v. Sawyer*, 1-159, 3-98.

By making entry, no title to land is acquired, but only right to call for grant upon compliance with statute, entry being a mere option to buy: *Dew v. Pyke*, 145-300; *Frasier v. Gibson*, 140-272; *Janney v. Blackwell*, 138-437; *Newton v. Brown*, 134-442; *Kimsey v. Munday*, 112-816; *Gilchrist v. Middleton*, 107-678; *Bryan v. Hodges*, 107-497; *Hall v. Hollofield*, 76-476; *Plemmons v. Fore*, 37-312.

Rocks in river above surface of water are vacant and unappropriated lands and subject to entry: *Jones v. Jones*, 2-488; *McKenzie v. Hulet*, 4-613.

Grant covering land, part of which not subject to entry, is good as to that part not covered by prior entry: *Hough v. Dumas*, 20-473.

As to burden of proof under section, see *Walker v. Carpenter*, 144-674; *Bowser v. Wescott*, 145-56.

7541. What swamp lands subject to grant. Marsh or swamp lands, lying in a swamp where the quantity of land does not in the whole swamp or marsh exceed two thousand acres, and which has not been surveyed by the state or state board of education, and marsh or swamp lands, unsurveyed as aforesaid, not exceeding

fifty acres in one body, though lying within a marsh or swamp of a greater number of acres than two thousand, may be entered, when the same shall be situated altogether between the lines of tracts heretofore granted.

Rev., s. 1694; Code, s. 2751; R. C., c. 42, s. 1; 1854-5, c. 21.

See Board of Education v. Lumber Co., 158-313.

7542. Swamp lands defined. The words “marsh and swamp land” wherever employed in this chapter, and the words “swamp lands” employed in the statutes creating the literary fund and literary board of North Carolina and the state board of education of North Carolina, or in any act in relation thereto, shall be construed to include all those lands which have been or may now be known and called “swamp” or “marsh” lands, “pocosin bay,” “briary bay,” and “savanna,” and all lands which may be covered by the waters of any lake or pond.

Rev., s. 1695; 1891, c. 302.

Statute referred to in Board of Education v. Makely, 139-38; Board of Education v. Lumber Co., 158-313; Beer v. Lumber Co., 170-337.

7543. Land covered by water, for wharves. Persons owning lands on any navigable sound, river, creek or arm of the sea, for the purpose of erecting wharves on the side of the deep waters thereof, next to their lands, may make entries of the lands covered by water, adjacent to their own, as far as the deep water of such sound, river, creek, or arm of the sea, and obtain title as in other cases. But persons making such entries shall be confined to straight lines, including only the fronts of their own tracts, and shall in no respect obstruct or impair navigation. When any such entry shall be made in front of the lands in any incorporated town, the town corporation shall regulate the line on deep water to which wharves may be built. This shall not affect existing rights. For all lands thus entered there shall be paid into the treasury not less than one dollar per acre. When any person has erected a wharf on public lands of the description aforesaid, before the first of January, one thousand nine hundred and three, such person shall have liberty to enter such land, including his wharf, under the restrictions and upon the terms above set forth: Provided, no land covered by water shall be subject to entry within thirty feet of any wharf, pier or stand used as a wharf in existence, or which may hereafter be erected by any person on his own land or land under his control, or on an extended line thereof; but land covered by water as aforesaid for the space of thirty feet from the landing place or line of any wharf, pier or stand used as a wharf, as aforesaid, shall remain open for the free ingress and egress of the owner and other persons to and from such wharf, pier, or stand: Provided further, no person shall be allowed to enter and obtain a grant for any land in the waters of Onslow county, in which the tide ebbs and flows, within thirty feet of the shore at low-water mark, unless the enterer shall be the owner of the adjacent shore.

Rev., s. 1696; Code, s. 2751; R. C., c. 42, s. 1; 1854-5, c. 21; 1889, c. 555; 1891, c. 532; 1893, c. 4; 1893, c. 17; 1893, c. 349; 1901, c. 364.

See section 7540. Land covered by navigable water is not subject to entry except as herein provided: Bell v. Smith, 171-116; Barfoot v. Willis, 178-200.

Entry of riparian owner for purpose of erecting wharf is confined to straight lines including front of his own land: Holley v. Smith, 132-36; Bond v. Wool, 107-139—and such owner acquires absolute right in land up to deep water, Bond v. Wool, 107-139—and may erect wharf

next to land up to deep water and by entry obtain title, *Ibid.*; *Gregory v. Forbes*, 96-77. Only owner of abutting land can make entry: *Zimmerman v. Robinson*, 114-39; *R. R. v. Way*, 169-1. Right of riparian owner to construct wharves is subject to legislative control, and also regulations of adjoining incorporated town: *Bond v. Wool*, 107-139. Right granted can only be transferred by conveyance of abutting land: *Zimmerman v. Robinson*, 114-39; *Land Co. v. Hotel*, 132-517. Effect of change in the nature of the land: *R. R. v. Way*, 172-774. The low-water mark is the boundary of the adjacent land: *Shannonhouse v. White*, 171-16.

Duty of incorporated town, upon application of riparian owner, to regulate line to which wharves may be built: *Wool v. Edenton*, 113-33, 117-1; *Wool v. Saunders*, 108-730—and this performance of duty may be enforced by courts, *Wool v. Edenton*, 113-33.

State can only grant land under navigable water for wharves, and county commissioners have no power to authorize building of wharf for purpose of public road: *Gregory v. Forbes*, 96-77.

Grant to riparian owner of land covered by navigable water for purpose of erecting wharves, etc., conveys only easement therein: *Land Co. v. Hotel*, 132-517; *R. R. v. Way*, 169-1.

Riparian owner has right to erect and maintain wharves subject to provisions of section declaring that navigation shall not be obstructed: *Riddick v. Dunn*, 145-34.

For right of fisheries on land entered, see section 1964 and annotations thereunder.

7544. Certain lakes not to be sold. White lake, Black lake, Waccamaw lake, and any other lake in Bladen, Columbus, or Cumberland counties, containing five hundred acres or more, shall never be sold nor conveyed to any person, firm, or corporation, but shall always be and remain the property of the state of North Carolina for the use and benefit of all the people of the state.

1911, c. 8.

7545. Void grants; not color of title. Every entry made, and every grant issued, for any lands not authorized by this subchapter to be entered or granted, shall be void; and every grant of land made since the sixth day of March, one thousand eight hundred and ninety-three, in pursuance of the statutes regulating entries and grants, shall, if such land or any portion thereof has been heretofore granted by this state, so far as relates to any such land heretofore granted, be absolutely void for all purposes whatever, shall confer no rights upon the grantee therein or those claiming under such grantee, and shall in no case and under no circumstances constitute any color of title to any person.

Rev., s. 1699; Code, s. 2755; R. C., c. 42, s. 2; 1893, c. 490.

NOTE.—This section was amended as to Moore county by 1909, c. 896.

For entries on Slick Rock creek in Graham county, see 1913, c. 112.

See annotations under sections 428 and 7540. Entry made and grant issued in violation of provisions of chapter, void: *Holley v. Smith*, 130-85; *Dosh v. Lumber Co.*, 128-86; *Walker v. Parker*, 169-150.

Provisions of section that junior grant shall be color of title so far as it covers land previously granted does not apply to grants issued since March 6, 1893: *Weaver v. Love*, 146-415; *Land Co. v. Wooten*, 177-248.

Though grant from state covers same land included in older grant, yet, title being no longer in state, junior grant is nevertheless color of title, which will ripen into complete title by adverse possession: *Weaver v. Love*, 146-415.

Adverse possession of plaintiffs, under a junior grant (which was color of title) from October, 1888, to December, 1897, vested the title in them as against owners of legal title under a senior grant, it not appearing that any of latter were exempt from operation of statute of limitations by reason of any disability, and a married woman who acquired no title by another junior grant issued to her cannot use her disability to defeat rights of plaintiffs: *Berry v. Lumber Co.*, 141-386.

ART. 2. ENTRY-TAKER

7546. Election and term of office. The board of commissioners of the several counties shall elect one person to receive entries of claims for lands within each county; and such entry-taker shall hold his office for four years.

Rev., s. 1700; Code, s. 2756.

Entry-taker cannot hereunder appoint deputy: *Pearson v. Powell*, 100-86; *Maxwell v. Wallace*, 38-593. **Acts done by one in capacity of deputy cannot be validated by subsequent acquiescence of entry-taker:** *Maxwell v. Wallace*, 38-593. **Entry made in presence of entry-taker, but without his authority, is void:** *Pearson v. Powell*, 100-86.

7547. Oath of office; fees. The entry-taker shall take the oath of office and receive the fees, and no other, prescribed in the chapters respectively entitled *Oaths and Salaries and Fees*.

Rev., s. 1703; Code, s. 2760; 1868-9, c. 173, s. 5.

7548. Bond required. Every entry-taker shall enter into bond in the sum of five hundred dollars, payable to the state, with sufficient surety, approved by the county commissioners, for the faithful discharge of the duties of his office.

Rev., s. 304; Code, s. 2758; 1868-9, c. 173, s. 3.

For action on official bonds, see section 354.

7549. Office of entry-taker at courthouse. The entry-taker shall keep his office at the courthouse of his county, or within one mile thereof, on pain of forfeiting one hundred dollars to the county, to be sued for by the county treasurer.

Rev., s. 1704; Code, s. 2759; 1868-9, c. 173, s. 4.

7550. Annual returns. Every entry-taker shall make return to the secretary of state annually, on the first day of January, of all lands entered with him, under a penalty of two hundred dollars.

Rev., s. 1705; Code, s. 2775; R. C., c. 42, s. 18; 1796, c. 455, s. 9; 1881, c. 265.

7551. Penalty for failure to make returns; how recovered. The secretary of state shall furnish the attorney-general, at every spring term of the superior court of Wake county, with a certificate of failure in every case where an entry-taker shall fail to make return according to law; and the attorney-general shall move for judgment against such entry-taker and his sureties, and the courts shall give judgment accordingly.

Rev., s. 1706; Code, s. 2776; R. C., c. 42, s. 19; 1833, c. 15.

7552. Warrants issued by successor in office. In all cases where an entry is made, and the entry-taker dies or resigns before a warrant is issued thereupon, his successor shall issue a warrant.

Rev., s. 1702; Code, s. 2772; R. C., c. 42, s. 15; 1835, c. 19.

7553. Register of deeds acts in case of vacancy. When a vacancy exists in the office of entry-taker, the register of deeds shall act as entry-taker until such vacancy is filled by an election by the commissioners. The register of deeds, in

such case, shall take charge of the books belonging to the office, shall discharge all the duties and receive the emoluments, and shall be subject to the rules, regulations, and penalties prescribed for entry-takers.

Rev., s. 1701; Code, s. 2757; 1868-9, c. 100, s. 2; 1868-9, c. 173, s. 2.

Section referred to in *Pearson v. Powell*, 100-88.

ART. 3. ENTRIES

7554. Who entitled to make entries. Any citizen of this state, and all persons who come into the state with the bona fide intent of becoming residents and citizens thereof, have the right and privilege of making entries of, and obtaining grants for, vacant and unappropriated lands.

Rev., s. 1692; Code, s. 2754; 1869-70, c. 19, s. 1.

Legislation as to grants of Cherokee lands explained in *Westfelt v. Adams*, 159-409. As to entry by a resident Cherokee indian, see *Colvord v. Monroe*, 63-288—by nonresident who has not expressed intention of becoming resident, *Wilson v. Land Co.*, 77-445—by nonresident, grant being issued to a person qualified to hold lands, *Ibid.*—by nonresident coming into state with intention of becoming citizen, *Mackridge v. Howerton*, 72-221—by two persons, one of whom is nonresident, *Weaver v. Love*, 146.

Even if an alien is prohibited from entering lands, he can nevertheless hold as against all others except the state: *Johnston v. Lumber Co.*, 144-720, and cases cited.

A railroad company has no authority to acquire land under this section, either directly or through a trustee: *Wallace v. Moore*, 178-114.

Land subject to entry, and grant issued therefor, such grant cannot be collaterally attacked for fraud, irregularity or other cause: *Janney v. Blackwell*, 138-437; *Dosh v. Lumber Co.*, 128-84; *Wyman v. Taylor*, 124-431; *Gilchrist v. Middleton*, 107-663, 108-705; *Brown v. Brown*, 103-213; *Dugger v. McKesson*, 100-1; *Harshaw v. Taylor*, 48-513; *Barwick v. Wood*, 48-312; *Stanmire v. Welch*, 48-214; *Stanmire v. Taylor*, 48-210; *McCormick v. Monroe*, 46-14; *Munroe v. McCormick*, 41-85; *Lovinggood v. Burgess*, 44-408; *Stanmire v. Powell*, 35-312; *Tate v. Greenlee*, 9-231; *Strother v. Cathey*, 5-162; *Reynolds v. Flinn*, 2-106.

Land not subject to entry, grant void, and may be attacked collaterally: *Anderson v. Meadows*, 159-404; *Janney v. Blackwell*, 138-437; *Holley v. Smith*, 130-85; *Dew v. Pyke*, 145-300; *Dosh v. Lumber Co.*, 128-84; *Gilchrist v. Middleton*, 107-663, 108-705; *Brown v. Brown*, 103-213; *Dugger v. McKesson*, 100-1; *Barnett v. Wood*, 58-433; *Harshaw v. Taylor*, 48-513; *Barwick v. Wood*, 48-312; *Stanmire v. Taylor*, 48-210; *McCormick v. Monroe*, 46-14; *Lovinggood v. Burgess*, 44-408; *Stanmire v. Powell*, 35-312; *Strother v. Cathey*, 5-162; *University v. Sawyer*, 1-159, 3-98; *Avery v. Strother*, 1-558.

Interesting discussion of action to quiet title claimed by defendants by adverse possession under a grant obtained by entry of land under this section: *Weaver v. Love*, 146-415.

7555. Entries in writing, with description of land. The claimant of land shall produce to the entry-taker a writing, signed by such claimant, setting forth where the land is situated, the nearest water-courses and remarkable places, and such water-courses and remarkable places as may be therein, the natural boundaries and the lines of any other person, if any, which divide it from other lands; and every such writing shall be one-quarter sheet of paper at least.

Rev., s. 1707; Code, s. 2765; R. C., c. 42, s. 11; 1777, c. 114, s. 5; 1783, c. 185, s. 11; 1885, c. 132; 1891, c. 70; 1893, cc. 120, 270; 1903, c. 272, s. 3.

As to sufficiency of description, see *Walker v. Parker*, 169-150; *Wallace v. Barlow*, 165-676; *Cain v. Downing*, 161-593; *Call v. Robinett*, 147-615; *Fisher v. Owen*, 144-649; *Grayson v. English*, 115-358; *McDiarmid v. McMillan*, 58-29; *Currie v. Gibson*, 57-25; *Ashley v. Sumner*, 57-121; *Horton v. Cook*, 54-270; *Fuller v. Williams*, 45-162; *Munroe v. McCormick*, 41-85; *Allen v. Gilreath*, 41-252; *Johnston v. Shelton*, 39-85; *Harris v. Ewing*, 21-369.

After survey and issuance of grant, the entry cannot be attacked collaterally for vagueness: *Call v. Robinett*, 147-615. Where entry is too vague to give notice, it cannot be aided by parol evidence: *Ibid.* But where the first entry is too vague, and it is rendered more definite by a survey before a second entry, it is sufficient notice: *Ibid.*; *Lovin v. Carver*, 150-710; *Cain v. Downing*, 161-593.

Requirement that entry shall set out "nearest water-courses," etc., merely directory: *Harris v. Ewing*, 21-369.

Entry-taker has no authority to act upon application for land not situated in his county, and entry of application in such case is void: *Harris v. Norman*, 96-59; *Lunsford v. Bostinon*, 16-483; *Avery v. Strother*, 1-558.

Cases referring to section: *In re Williams*, 146-268; *Walker v. Carpenter*, 144-677.

7556. Duty of entry-taker. The entry-taker shall immediately endorse the same with the name of the claimant, the number of acres claimed, and date of the entry; and shall copy the same in a book well bound, and ruled with a large margin into spaces of equal distance, each space to contain one entry only, and every entry to be made in the order of time in which it shall be received, and numbered in the margin. The entry-taker shall thereupon cause a copy of the entry to be posted for thirty days at three public places in the township or townships in which the land covered by the entry is located. A copy of the entry shall also be posted for thirty days at the courthouse door of the county in which such land lies, and advertised for thirty days in a newspaper published at the county-seat of such county. If there be no newspaper published in such county, then the advertisement provided for shall be made in the nearest newspaper.

Rev., s. 1708; Code, s. 2765; 1903, c. 272, s. 3.

Notice must be published by the entry-taker: *Walker v. Parker*, 169-150; *Beer v. Lumber Co.*, 170-337; *Garrison v. Williams*, 150-674.

Entry made on books of entry-taker by person in his presence, but without authority, is void: *Pearson v. Powell*, 100-86—also entry made by person in capacity of deputy, *Maxwell v. Wallace*, 38-593. Entry-taker's books are no notice of prior entry: *Merrill v. Sloan*, 5-121. Duties of entry-takers defined: *Harris v. Norman*, 96-61. Section referred to in *In re Drewry*, 129-457.

7557. Protest filed; bonds required. If any person shall claim title to or an interest in the land covered by the entry, or any part thereof, he shall, within the time of the advertisement as above provided, file his protest in writing with the entry-taker against the issuing of a warrant thereon; and upon the filing of such protest, the entry-taker shall certify copies of the entry and protest to the superior court; thereupon a notice shall be issued by the clerk of the superior court to both parties, commanding them to appear before the clerk in twenty days and file their respective bonds for costs as in other cases where the title to real estate is in controversy, and to the claimant to appear at the next term of the court and show cause why the entry shall not be declared inoperative and void. This section shall not deprive either party of the advantage of prosecuting or defending without giving bond, as provided in other cases.

Rev., s. 1709; Code, s. 2765; 1903, c. 272, s. 3; 1907, c. 66, s. 1.

General nature of proceedings in protest explained: *In re Williams*, 146-268; *Bowser v. Wescott*, 145-56. The right of protest is given only to those who claim an interest in the land, and protestant must assert his title: *Walker v. Parker*, 169-150; *In re Williams*, 146-268; *In re Drewry*, 130-342, overruling same case in 129-457.

Proceedings of protest against enterer on state's lands is not a civil action, but is to determine right of enterer, and burden of proof is on enterer to show, as against protestant alone,

that land was vacant: *Bowser v. Wescott*, 145-56; *In re Williams*, 146-268; *Walker v. Parker*, 169-150; *Cain v. Downing*, 161-593. What the enterer and protestant must show, and who has the burden of proof: *Land Co. v. Maxwell*, 176-140; *Walker v. Parker*, 169-150.

Proceeding hereunder cannot be terminated by protestant taking a nonsuit. He may withdraw his protest, but he remains a party to the proceeding and may except to form of judgment and appeal therefrom, he being bound by the judgment: *In re Williams*, 146-268. For form of judgment in proceeding hereunder and taxation of costs, see *Ibid*.

Protest may be dismissed when not in proper form, but it is within discretion of the court to allow an amended protest to be filed: *Gold v. Maxwell*, 172-149. The time for filing protest is mandatory, and is a condition annexed to the right, and not a statute of limitations: *Garrison v. Williams*, 150-674.

Upon insufficient notice given claimant, alias notice should be issued: *Lumber Co. v. Coffey*, 144-560.

Where protestant shows that grant was issued to his grantor prior to entry by claimant, not error for court below to refuse to dismiss action under Hinsdale act, or to refuse to charge jury in favor of protestant if they believed the evidence, the right of entry being on "vacant and unappropriated land": *Lumber Co. v. Coffey*, 144-560. Not necessary that protestant make out a perfect chain of title, with no link unbroken, as in ejectment: *Ibid*. Protestant cannot introduce a grant to a third person under whom he does not claim for the purpose of showing that the land is not vacant: *Lumber Co. v. Clarke*, 152-544. When enterer introduces a valid grant, issued prior to his, it is not necessary for protestant to show a connected title therewith: *Babb v. Mfg. Co.*, 150-139.

Proceeding in case of two entries on the same land taken in two counties: *Ullery v. Guthrie*, 148-417.

Section referred to in *Johnson v. Wescott*, 139-29.

7558. Payment of price; lapse of entry. All entries of land shall, in every event, be paid for within one year from the date of entry, unless a protest be filed to the entry, in which event they shall be paid for within twelve months after final judgment on the protest; and all entries of land not thus paid for shall become null and void, and may be entered by any other person.

Rev., s. 1731; Code, s. 2766; R. C., c. 42, s. 8; 1854-5, c. 49.

Provision that purchase money must be paid within time prescribed above not applicable to Cherokee lands: *Frazier v. Gibson*, 140-272; *Kimsey v. Munday*, 112-816.

Land must be paid for within statutory period or entry lapses: *Gilchrist v. Middleton*, 108-705; *Wyman v. Taylor*, 124-426; *Wilson v. Land Co.*, 77-457; *Bryson v. Dobson*, 38-139; *Plemmons v. Fore*, 37-312.

7559. When entry lapses, subsequent entry valid. Whenever an entry of land shall be made in any entry-taker's office, and the enterer shall fail to have the land surveyed and pay the price for the same within the time limited by law, any person who may have made a subsequent entry for the same land may have the same surveyed and pay the price and have a grant.

Rev., s. 1710; Code, s. 2767; R. C., c. 42, s. 9; 1809, c. 771.

Enterer failing to pay price within statutory period, subsequent enterer paying price entitled to grant: *Kimsey v. Munday*, 112-816; *Stanly v. Biddle*, 57-383.

Entry by A. lapsing and subsequent entry by B. also lapsing, first one obtaining grant held to have title: *Horton v. Cook*, 54-270. One claiming under grant obtained upon lapsed entries cannot fall back upon subsequent entry made before issuance of such grant: *Kimsey v. Munday*, 112-816; *Stanly v. Biddle*, 57-383. Not necessary that entry should lapse before another can be made: *Ibid*.

Effect of notice of first entry upon person obtaining grant under junior entry: *Gilchrist v. Middleton*, 107-678; *Dew v. Pyke*, 145-300; *Plemmons v. Fore*, 37-312; *Harris v. Ewing*, 21-374; *Featherston v. Mills*, 15-598.

After lapse of so many years and without actual notice that purchase money for older grant had been paid, another might innocently enter and take out a grant for the land for his own benefit: *Gilchrist v. Middleton*, 108-705.

7560. Lapsed entries not renewed within one year. No lands entered on the books of the entry-taker, the entry of which shall be suffered to lapse by non-payment of the price thereof, shall be reëntered within one year after the time at which such entry shall lapse, by the person in whose name such entry was made, but such reëentry shall be void.

Rev., s. 1712; Code, s. 2768; R. C., c. 42, s. 10.

Section referred to in *Gilechrist v. Middleton*, 107-679.

7561. Entry for benefit of entry-taker. If any entry-taker shall desire to make an entry in his own name, the same shall be made in its proper place, before a justice of the peace of the county, not being a surveyor or assistant; which entry the justice shall return to the next meeting of the board of county commissioners, who shall insert it; and every entry made by or for such entry-taker, in any other manner, shall be void.

Rev., s. 1711; Code, s. 2773; R. C., c. 42, s. 16; 1777, c. 114, s. 17.

Entry made by entry-taker otherwise than as above is void: *Terrell v. Manney*, 6-375.

ART. 4. SURVEYS

7562. Warrant for survey issued. If no protest be filed, or where the protest is filed and the right of the claimant to make the entry is sustained, the entry-taker shall deliver to the party a copy of the entry with its proper number and a warrant to the surveyor to survey the same, which warrant shall contain a copy of the entry with its number and date, and a certificate that notice has been given as above provided, and that no protest has been filed, or that protest has been filed and that the court has decided in favor of the claimant. Each warrant shall be delivered to the surveyor in the order of time in which the entry was made.

Rev., s. 1713; Code, s. 2765; 1903, c. 272, s. 3.

When protest is withdrawn enterer is entitled to copy of entry and warrant of survey: *In re Williams*, 146-268. Where protestant withdraws protest, court cannot tax protestant with cost of survey of entry made after withdrawal, but all costs, including costs of any survey made by direction of court, should be taxed against him: *Ibid*.

7563. Duplicate warrants. When any person duly makes an entry of lands which has not become void by lapse of time, and upon which the entry-taker has issued his warrant of survey, and the same be lost by accident, the entry-taker, on due proof being made to his satisfaction, by affidavit of the claimant or the surveyor or deputy surveyor, may issue a duplicate warrant of survey, of the same tenor and date, taking care to set forth, on the face of such warrant, that the same is a duplicate; in which case such warrant shall be made as valid as the original.

Rev., s. 1714; Code, s. 2771; R. C., c. 42, s. 14; 1814, c. 878, s. 1.

7564. Surveys according to priority of entry. The surveyor shall survey all entries of land according to the priority of entry, paying due respect to the number of each warrant; and every grant obtained by any subsequent entry otherwise than is by this chapter directed, shall be void: Provided, nothing herein shall be construed to prevent any person who shall make a subsequent

entry from surveying and obtaining a grant, as the law directs, for all such surplus land as shall remain, after the enterer of such land has surveyed his entry as aforesaid.

Rev., s. 1715; Code, s. 2770; R. C., c. 42, s. 13; 1787, c. 279.

Second entry good as to land remaining after survey of prior entry: *Stanley v. Biddle*, 57-383. Enterer cannot survey his own land even as deputy surveyor: *Avery v. Walker*, 8-140.

7565. Chainbearers sworn. No survey for the purpose of obtaining a grant shall be made until the chainbearers shall be sworn to measure justly and truly, and to deliver a true account thereof to the surveyor. The chainbearers shall actually measure the land surveyed. The surveyor is empowered to administer the oath.

Rev., s. 1717; Code, s. 2769; R. C., c. 42, s. 12; 1777, c. 114, s. 10.

Chainbearers must be sworn to measure justly and truly, and to deliver a true account thereof to surveyor: *Avery v. Walker*, 8-160.

7566. Survey made and plots prepared. Every county surveyor, upon receiving the copy of the entry and order of survey for any claim of lands, shall, within ninety days, lay off and survey the same agreeably to this chapter; and make thereof two fair plots, the scale whereof and the number of the entry shall be mentioned on such plots; and shall set down in words the beginning, angles, distances, marks, and water-courses, and other remarkable places crossed or touched by or near to the lines of such lands, and also the quantity of acres; and land lying on any navigable water shall be surveyed in such manner that the water shall form one side of the survey, and the land be laid off back from the water.

Rev., s. 1716; Code, s. 2769; R. C., c. 42, s. 12; 1777, c. 114, s. 10; 1903, c. 272, s. 4.

The plots required to be made are evidence in a case involving boundaries: *Lumber Co. v. Hutton*, 152-537. Original plot part of grant for purpose of indicating shape and location of boundaries, though not conclusive evidence as to same: *Redmond v. Mullenax*, 113-505.

Line actually run, marked and corner made, party claiming under patent entitled to hold accordingly, notwithstanding mistake in patent: *Higdon v. Rice*, 119-623; *Cherry v. Slade*, 7-82.

Not necessary that entry should be so specified as to entirely identify boundaries, as survey is provided for that purpose: *Harris v. Ewing*, 21-373.

Rule of law that deeds and grants shall be so run as to include land actually surveyed with view to its execution: *Higdon v. Rice*, 119-626; *Shaffer v. Gaynor*, 117-15; *Baxter v. Wilson*, 95-143; *Houser v. Belton*, 32-358; *Hough v. Horne*, 20-369; *Haley v. Morgan*, 19-425; *Cherry v. Slade*, 7-82; *Bradford v. Hill*, 2-22; *Reed v. Schenck*, 2-415.

Section referred to: *In re Drewry*, 130-343.

7567. Plots and warrant sent to secretary of state. The surveyor shall, within one year, transmit the plots, together with the warrant or order of survey, to the office of the secretary of state, or deliver them to the claimant. The secretary of state shall, on receipt of the plots, file one in his office, and attach the other to the grant.

Rev., ss. 1718, 1734; Code, s. 2769; R. C., c. 42, s. 12; 1777, c. 114.

Surveyor required to transmit plots to secretary of state: *Higdon v. Rice*, 119-631; *Redmond v. Mullenax*, 113-512. Original plot made part of grant, though not conclusive evidence as to shape and location of land: *Higdon v. Rice*, 119-623; *Redmond v. Mullenax*, 113-505.

7568. Special surveyor appointed, if no county surveyor. When the office of county surveyor is vacant, the county commissioners may appoint a special surveyor to survey any lands that may be entered; and the plots and certificates of such special surveyor, accompanied by a copy of the order of the county commissioners appointing him, shall be held valid, as if done by a county surveyor duly elected.

Rev., s. 1719; Code, s. 2769; R. C., c. 42, s. 12; 1777, c. 114, s. 10.

7569. Special surveyor, when county surveyor interested. When a county surveyor wishes to have lands surveyed in a county where he acts as principal surveyor, for the purpose of obtaining a grant, the board of county commissioners of the county shall appoint some person to make the survey, and the entry-taker shall direct his warrant of survey to such person; and all certificates, surveys, and plots of the same shall be made under the same regulations as prescribe the duty of the county surveyor in similar cases.

Rev., s. 1721; Code, s. 2774; R. C., c. 42, s. 17; 1828, c. 23.

Enterer cannot make his own survey: *Avery v. Walker*, 8-160.

7570. Record of surveys to be kept. The county commissioners of the several counties of the state shall provide a suitable book or books for recording of surveys of entries of land, to be known as Record of Surveys, to be kept in the office of register of deeds as other records are kept. And such record shall have an alphabetical and numerical index, the numerical index to run consecutively. And it shall be the duty of every county surveyor or his deputy surveyor who makes a survey to record in such book a perfect and complete record of all surveys of lands made upon any warrant issued upon any entry, and date and sign same as of the day such survey was made.

Rev., s. 1722; 1905, c. 242.

Record of survey is to be kept in office of entry-taker, to give notice of all surveys; it must be definite enough to identify the land: *Lovin v. Carver*, 150-710.

7571. Former surveys recorded. Where any ex-county surveyor is alive and has correct minutes or notes of surveys of land on entries made by him during his term of office, it shall be lawful for him to record and index such survey in such record of surveys, and the county commissioners shall pay for such services ten cents for each survey so recorded and indexed.

Rev., s. 1725; 1905, c. 242, s. 2.

7572. What record must show; received as evidence. All surveys so recorded in such book shall show the number of the tract of land, the name of the party entering, and the name of the assignee if there be any assignee, and shall be duly indexed, both alphabetically and numerically, in such record in the name of the party making the entry, and the name of the assignee if there be any assignee. Such record of any surveyor or deputy surveyor when so made shall be read in evidence in any action or proceeding in any court: Provided, that if such record differs from the original certificates of survey heretofore made or on file in office of secretary of state, such original or certified copy of the certificate in secretary of state's office shall control.

Rev., s. 1723; 1905, c. 242, ss. 2, 3, 6.

7573. Fees for recording. For recording and indexing such surveys the surveyor may charge twenty-five cents, which shall be paid by the party for whom the survey is made; and any surveyor shall not be required to make any survey until his fees provided by law are paid, including the twenty-five cents for recording and indexing.

Rev., s. 1724; 1905, c. 242, s. 4.

7574. Penalty for failure to make record. Any county surveyor or deputy surveyor failing to make such record of any survey within sixty days after he makes a survey shall forfeit and pay to any party who may sue for the same two hundred dollars, and be subject to be removed from office by the board of county commissioners, and if any surveyor is removed the county commissioners shall appoint his successor, and all papers and records of a public nature in the possession of such surveyor so removed, or who may die, shall be turned over to his successor in office.

Rev., s. 1726; 1905, c. 242, s. 5; 1907, c. 579, s. 1.

ART. 5. GRANTS

7575. Price to be paid for land. There shall be paid to the state treasurer one dollar and fifty cents an acre for every acre of land that may be entered. All lands entered under this subchapter for which a grant has been obtained at the price of one dollar and fifty cents an acre shall be free from all claim, title, or interest that is now vested in the state of North Carolina or in the state board of education. But this section shall not have the effect to make valid grants declared to be void under article one of this subchapter.

Rev., s. 1733; 1909, c. 447.

7576. Price paid state treasurer. The state treasurer shall receive the money for vacant and unappropriated lands upon the presentation to him of the certificate of the secretary of state, setting forth the number and date of the entry, and the quantity of acres found by the surveyor to be vacant, as the same may appear by the returns made to him from the surveyor or entry-taker, or from the entry-taker's warrant, or the plots of survey.

Rev., s. 1732; Code, s. 2777; R. C., c. 42, s. 20; 1827, c. 23; 1829, c. 30.

Payment without certificate of secretary does not entitle party to grant: *Buchanan v. Fitzgerald*, 41-121.

7577. Grant issued on auditor's certificate. No grant shall issue on the treasurer's receipt for the money; but the auditor shall make out and deliver to the secretary of state a certificate, conformable to each receipt by him countersigned, on which the secretary shall issue the grant.

Rev., s. 1728; Code, s. 2778; R. C., c. 42, s. 21; 1799, c. 525, s. 4.

7578. Manner of issuing grant. The secretary of state, on application of claimants, shall make out grants for all surveys returned to his office, which grants shall be authenticated by the governor, countersigned by the secretary, and recorded in his office. The date of the entry,.....the number of the survey

from the certificate of survey upon which the grant is founded shall be inserted in every grant, and a copy of the plot shall be attached to the grant; and no grant shall issue upon any survey unless the same be signed by the surveyor of the county. Upon certificate from the entry-taker that the claimant has assigned his interest under the entry, a grant shall be issued in the name of the assignee: Provided, that the assignee is a citizen and resident of this state, or has come into the state with the bona fide intent of becoming a resident and citizen thereof.

Rev., ss. 1729, 1734, 1735; Code, s. 2779, c. 522; R. C., c. 42, s. 22; 1783, c. 185, s. 14; 1796, c. 455; 1799, c. 525, s. 2.

Grants must be issued under the seal of state, and a paper without such seal is not a grant: *Howell v. Hurley*, 170-798—but the paper may be an abstract of a grant and the grant is presumed to have been regularly issued, S. c., 170-401. What is sufficient issuing by secretary of state: *Fowler v. Development Co.*, 158-48. What is sufficient “countersigning”: *Richards v. Lumber Co.*, 158-54.

Evidence to be received and acted upon by secretary in issuing grant: *Wool v. Saunders*, 108-729—and discretion of secretary in issuing same, *Ibid.* Authority to issue grant: *Harris v. Norman*, 96-59; *Terrell v. Manney*, 6-375. Time within which grant may issue: *Krous v. Long*, 41-259. Whether the grant corresponds with the entry is a question for the officers issuing the grant, and is not open to attack by a stranger to the title or by subsequent claimant: *Call v. Robinett*, 147-615.

An assignment of entry, though procured by fraud, does not raise presumption of fraud, and subsequent purchasers for value without notice of the fraud will be protected: *Phillips v. Lumber Co.*, 151-519.

Effect on grant where record fails to show that great seal was affixed to grant: *Broadwell v. Morgan*, 142-475; *Aycock v. R. R.*, 89-323; *Steele v. Anthony*, 2-98—where secretary fails to countersign it, *Hunter v. Williams*, 8-221—where it contains clause of reservation, *Brown v. Rickard*, 107-639—where it was taken out upon lapsed entry, *Wilson v. Land Co.*, 77-445; *Horton v. Cook*, 54-270. Effect of mistake in grant: *Lunsford v. Bostion*, 16-483; *Van Pelt v. Pugh*, 18-210. Effect where grant not recorded in office of secretary of state: *Slade v. Green*, 9-226—of mistake in recording grant, *Van Pelt v. Pugh*, 18-210; *Hughes v. Debnam*, 53-131.

Where two grants issued for same land, second conveys no title: *Stewart v. Keener*, 131-486; see *Dew v. Pyke*, 145-300. As to priority of grants issued same day, see *Reddick v. Leggat*, 7-539; *Andrews v. Mulford*, 2-311; *Foreman v. Tyson*, 2-496.

First grant, not first entry, gives title: *Seekright v. Bogan*, 2-176; *Andrews v. Mulford*, 2-318; *Dickey v. Hoodenpile*, 2-358.

Grant issued cannot be made void by subsequent legislation: *State v. Spencer*, 114-770; *Gilechrist v. Middleton*, 108-705.

7579. Registration of grants. Every person obtaining a grant shall, within two years after such grant is perfected, cause the same to be registered in the county where the land lies; and any person may cause to be there registered any certified copy of a grant from the office of the secretary of state, which shall have the same effect as if the original had been registered.

Rev., s. 1729; Code, s. 2779; R. C., c. 42, s. 22; R. S., c. 42, s. 24; 1783, c. 185, s. 14; 1796, c. 455; 1799, c. 525, s. 2.

Act of 1885, chapter 147 (Connor Act), not applicable to registration of grants, same being governed by this section: *Wyman v. Taylor*, 124-426. It is only required that the grantee shall have his grant registered in the proper county within two years: *Dew v. Pyke*, 145-300. The time for such registration may be extended: *Ibid.*; *Hill v. Jackson*, 31-333. The registration of the grant is constructive notice: *Ritchie v. Fowler*, 132-788.

Great seal of state, together with certificate of secretary of state, sufficient authority to warrant registration of grant, without certificate of clerk: *Barcello v. Hapgood*, 118-712; *Coltrane v. Lamb*, 109-209; *Ray v. Stewart*, 105-472.

Registration of grant, describing land by metes and bounds, and referring to another registered grant, is not defective for failure to copy entire grant: *Weeks v. Wilkins*, 134-516.

Grants are proven by the seal, but the fact that a scroll or imitation of seal does not appear of record does not invalidate registry of grant: *Broadwell v. Morgan*, 142-475.

For extension of time for registration of grants, see section 7593.

7580. Grant issued in case of claimant's death. In case of the death of any person having made an entry of lands, pending the same or before making out the grant, the secretary shall issue the grant in the name of the decedent; and those interested, as heirs at law, devisees, tenants in dower, by the curtesy, or otherwise, shall have the same estate as if the land had been granted during the life of the decedent.

Rev., s. 1730; Code, s. 2780; R. C., c. 42, s. 23; 1715, c. 44, s. 6; 1798, c. 493, s. 6.

Enterer's death before grant, same issued in decedent's name: *Henry v. McCoy*, 131-587.

7581. When secretary of state may withhold grant. When application is made for a grant, if the secretary of state has reason to believe that the land covered by any entry and the surveys made in pursuance of the same is the property of the state board of education, he may, in his discretion, withhold the issuance of a grant for same until the engineer of the state board of education or surveyor appointed by the board shall have examined into the matter and made his report. And if the engineer or surveyor shall report that the lands in question are the property of the state board of education and not subject to entry, the secretary of state shall not issue a grant on such entry and surveys. If the secretary of state has reason to believe that the land for which a grant is sought has already been granted and does not belong to the state, he shall not issue grant for the same until it appears to his satisfaction that the land does belong to the state and is subject to entry.

Rev., s. 1727; 1903, c. 272, s. 3.

Prior to adoption of this section, when it appeared from warrant and survey that the law had been complied with, the claimant was entitled to a grant: *Wool v. Saunders*, 108-729.

7582. Cutting timber on land before obtaining a grant. If any person shall make an entry of any lands, and before perfecting title to same shall enter upon such lands and cut therefrom any wood, trees, or timber, he shall be guilty of a misdemeanor. One-half of any fine collected under this section shall be paid to the informer and one-half to the school fund of the county in which the land is situated. Any person found guilty under the provisions of this section shall further pay to the state double the value of the wood, trees, or timber taken from the land, and it shall be the duty of the solicitor of the district in which the land lies to sue for the same.

Rev., s. 3741; 1903, c. 272, s. 4.

7583. Lands conveyed to United States for inland waterway. For the purpose of aiding in the construction of a proposed inland waterway by the United States from the city of Norfolk, in the state of Virginia, to Beaufort inlet, in the state of North Carolina, the secretary of state is hereby authorized to issue to the United States of America a grant to the land located within a distance of one thousand feet on either side of the center of the said inland waterway, in so far

as such land is subject to grant by the state of North Carolina, the said grant to issue upon a certificate furnished to the secretary of state by the secretary of war, or by any authorized officer of the corps of engineers of the United States army, or by any other authorized official, exercising control of the construction of the said waterway.

Wherever, in the construction of the said inland waterway or in the improvement of any other waterway within this state, lands theretofore submerged shall be raised above the water by deposit of excavated material, the lands so formed shall become the property of the United States for a distance of one thousand feet on either side of the center of such canal or channel, and the secretary of state is hereby authorized to issue to the United States a grant to the land so formed within the distance above mentioned, the grant to issue upon a certificate furnished to the secretary of state by some authorized official of the United States as above provided.

1913, c. 197.

7584. Card index system for grants. The secretary of state shall install in his office a card index system for grants, and every warrant, plot, and survey that can be found shall be encased in separate envelopes. Each card and envelope shall show substantially the following:

.....County.	.....Acres.
Name	
Grant No.	Issued.....
Grant Book	Page.....
Entry No.	Entered.....
File No.	
Location	
Remarks:	

Such grant books as are old and falling to pieces shall be recopied, and whenever any part of the record of a grant is partly gone or destroyed the secretary of state shall restore same, if he can do so with accuracy from the description in the plot and survey upon which the grant was issued and original record made.

1909, c. 505, ss. 1, 2, 3.

ART. 6. CORRECTION OF GRANTS

7585. Change of county line before grant issued or registered. All grants issued on entries for lands which were entered in one county, and before the issuing of the grants therefor, or the registration of the grants, by the change of former county lines, or the establishment of new lines, the lands so entered were placed in a county, or in counties different from that in which they were situate, and the grants were registered in the county where the entries were made, shall be good and valid, and the registration of the grants shall have the same force and effect as if they had been registered in the county where the lands were situate; and all persons claiming under and by such grants may have them, or a certified copy of the same, from the office of the secretary of state, or from the office of the register of deeds when they had been erroneously registered, re-

corded in the office of the register of deeds of the county or counties where the lands lie, and such registration shall have the same force and effect as if the grants had been duly registered in such county or counties.

Rev., s. 1736; 1897, c. 37.

The provisions of this section applied in *Wyman v. Taylor*, 124-426. Formation of new county after entry, grant issued as of lands in new county: *McMillan v. Gambill*, 106-359.

7586. Entries in wrong county. Whereas many citizens of the state, on making entries of lands near the lines of the county wherein they reside, either for want of proper knowledge of the land laws of the state or not knowing the county lines, have frequently made entries and extended their surveys on such entries into other counties than those wherein they were made, and obtained grants on the same; and whereas doubts have existed with respect to the validity of the titles to lands situated as aforesaid, so far as they extend into other counties than those where the entries were made; for remedy whereof it is hereby declared that all grants issued on entries made for lands situated as aforesaid shall be good and valid against any entries thereafter made or grants issued thereon.

Rev., s. 1737; Code, s. 2784; R. C., c. 42, s. 27; 1805, c. 675; 1834, c. 17.

Provisions of this section applicable where entry of land lying partly in two counties, which is unknown to grantee, is made only in one county: *Harris v. Norman*, 96-59; *Lunsford v. Bostion*, 16-483; *Avery v. Strother*, 1-558. See, also, *Ullery v. Guthrie*, 148-417.

7587. Errors in surveys of plots corrected. Whenever there may be an error by the surveyor in plotting or making out the certificate for the secretary's office, or the secretary shall make a mistake in making out the courses agreeable to such returns, or misname the claimant, or make other mistake, so as such claimant shall be injured thereby, the claimant may prefer a petition to the superior court of the county in which the land lies, setting forth the injury which he might sustain in consequence of such error or mistake, with all the matters and things relative thereto; and the court may hear testimony respecting the truth of the allegations set forth in the petition; and if it shall appear by the testimony, from the return of the surveyor or the error of the secretary, that the patentee is liable to be injured thereby, the court shall direct the clerk to certify the facts to the secretary of state, who shall file the same in his office, and correct the error in the patent, and likewise in the records of his office. The costs of such suit shall be paid by the petitioner, except when any person may have made himself a party to prevent the prayer of the petitioner being granted, in which case the costs shall be paid as the court may decree. The benefits granted by this section to the patentees of land shall be extended in all cases to persons claiming by, from, or under their grants, by descent, devise, or purchase. When any error is ordered to be rectified, and the same has been carried through from the grant into mesne conveyances, the court shall direct a copy of the order to be recorded in the register's book of the county: Provided, no such petition shall be brought but within three years after the date of the patent; and if brought after that time, the court shall dismiss the same, and all proceedings had thereon shall be null and of no effect: Provided further, nothing herein shall affect the rights or interest of any person claiming under a patent issued between the period of the date of the grant alleged to be erroneous and the time of filing the petition,

unless such person shall have had due notice of the filing of the petition, by service of a copy thereof, and an opportunity of defending his rights before the court according to the course of the common law.

Rev., s. 1738; Code, s. 2785; R. C., c. 42, s. 28; 1790, c. 326; 1798, c. 504; 1804, c. 655; 1814, c. 876.

7588. Resurvey of lands to correct grants. Persons who have heretofore entered or may hereafter enter vacant lands shall not be defeated in their just claims by mistakes or errors in the surveys and plots furnished by surveyors, but in every case where the purchase money has been paid into the state treasury within the time prescribed by law after entry and survey or plot furnished shall be found to be defective or erroneous, the party having thus made entry and paid the purchase price may obtain another warrant of survey from the entry-taker of the county where the land lies, and have his entry surveyed as is directed by existing laws, and on presenting a certificate of survey and two fair plots thereof to the secretary of state within six months after the payment of the purchase money, the party making such entry and paying such purchase price shall be entitled to receive, and it shall be the duty of the secretary of state to issue to him, the proper grant for the lands so entered.

Rev., s. 1739; 1901, c. 734.

7589. Lost seal replaced. In all cases where the seal annexed to a grant is lost or destroyed the governor may, on the certificate of the secretary of state that the grant was fairly obtained, cause the seal of the state to be affixed thereto.

Rev., s. 1740; Code, s. 2781; R. C., c. 42, s. 24; 1807, c. 727.

Section referred to in *Ray v. Stewart*, 105-473.

7590. Errors in grants corrected. If in issuing any grant the number of the grant or the name of the grantee or any material words or figures suggested by the context have been omitted or not correctly written or given, or the description in the body of the grant does not correspond with the plot and description in the surveyor's certificate attached to the grant, or if in recording the grant in his office the secretary of state has heretofore made or may hereafter make any mistake or omission by which any part of any grant has not been correctly recorded, the secretary of state shall, upon the application of any party interested and the payment to him of his lawful fees, correct the original grant by inserting in the proper place the words, figures, or names omitted or not correctly given or suggested by the context; or if the description in the grant does not correspond with the surveyor's plot or certificate, he shall make the former correspond with the latter as the true facts may require. In case the party interested prefer it, the secretary of state shall issue a duplicate of the original grant, including therein the corrections made; and in those cases in which grants have not been correctly recorded he shall make the proper corrections upon his records, or by rerecording, as he may prefer; and any grant corrected as aforesaid may be recorded in any county of the state as other grants are recorded, and have relation to the time of the entry and date of the grant as in other cases.

Rev., s. 1741; 1889, c. 460.

NOTE.—In Jackson and Macon counties, corrections under this section may be made only after written notice to all persons interested. Rev., s. 1742; 1901, c. 505.

Mistake in grant caused by either surveyor or secretary of state cannot prejudice grantee in certain cases: 2-378 (note by reporter).

7591. Irregular entries validated. Wherever persons have prior to January first, one thousand eight hundred and eighty-three, irregularly entered lands and have paid the fees required by law to the secretary of state, and have obtained grants for such lands duly executed, the title to the lands shall not be affected by reason of such irregular entries; and the grants are hereby declared to be as valid as if such entries had been properly made.

Rev., s. 1743; Code, s. 2761; 1868-9, c. 100, s. 4; 1868-9, c. 173, s. 6; 1874-5, c. 48.

NOTE.—For validation of grants made prior to 1820, when the surveys were signed by the deputy surveyor, see Rev., s. 1745; Code, s. 2783; R. C., c. 42, s. 26.

For validation of grants made prior to 1829, to surveyors or deputy surveyors who had themselves made the surveys, see Rev., s. 1746; Code, s. 2782; R. C., c. 42, s. 25.

For validating irregular entries, see *Wyman v. Taylor*, 124-426.

7592. Grants signed by deputy secretary of state validated. Where state grants have heretofore been issued and the name of the secretary of state has been affixed thereto by his deputy or chief clerk, or by any one purporting to act in such capacity, such grants are hereby declared valid; but nothing herein contained shall interfere with vested rights.

Rev., s. 1744; 1905, c. 512.

Section referred to in *Richards v. Lumber Co.*, 158-54.

7593. Time for registering grants extended. All grants from the state of North Carolina of lands and interests in land heretofore made, which were required or allowed to be registered within a time specified by law, or in the grants themselves, may be registered in the counties in which the lands lie respectively at any time within two years from the first day of January, nineteen hundred and eighteen, notwithstanding the fact that such specified time has already expired, and all such grants heretofore registered after the expiration of such specified time shall be taken and treated as if they had been registered within such specified time: Provided, that nothing herein contained shall be held or have the effect to divest any rights, titles, or equities in or to the land covered by such grants, or any of them, acquired by any person from the state of North Carolina by or through any entry or grant made or issued since such grants were respectively issued, or those claiming through or under such subsequent entry or grant.

Rev., s. 1747; 1893, c. 40; 1901, c. 175; 1905, c. 6; 1907, c. 805; 1909, c. 167; 1911, c. 182; Ex. sess. 1913, c. 27; Ex. sess. 1913, c. 45; 1915, c. 170; 1917, c. 84.

Time extended for registering grants, but same not affecting existing rights: *Janney v. Blackwell*, 138-437; *Morehead v. Hall*, 132-133; *McCall v. Wilson*, 101-598. See, also, *Dew v. Pyke*, 145-300.

ART. 7. GRANTS VACATED

7594. Civil action to vacate grant. When any person claiming title to lands under a grant or patent from the king of Great Britain, any of the lords proprietors of North Carolina, or from the state of North Carolina, shall consider himself aggrieved by any grant or patent issued or made since the fourth day of July, one thousand seven hundred and seventy-six, to any other person, against law or obtained by false suggestions, surprise, or fraud, the person aggrieved may bring a civil action in the superior court for the county in which such land

may be, together with an authenticated copy of such grant or patent, briefly stating the grounds whereon such patent should be repealed and vacated, whereupon the grantee, patentee, or the person, owner, or claimant under such grant or patent, shall be required to show cause why the same shall not be repealed and vacated.

Rev., s. 1748; Code, s. 2786; R. C., 'c. 42, s. 29.

Grant can only be set aside at suit of state or of prior grantee: *Crow v. Holland*, 15-417. **Action only available to senior against junior grantee:** *Wadsworth v. Cozard*, 175-15; *Henry v. McCoy*, 131-588; *State v. Bland*, 123-739; *McNamee v. Alexander*, 109-246; *Carter v. White*, 101-30; *Holland v. Crow*, 34-275; *Hoyt v. Rich*, 20-677; *Miller v. Twitty*, 20-10; *O'Kelly v. Clayton*, 19-246; *Hoyle v. Logan*, 15-495; *Crow v. Holland*, 15-417; *Featherston v. Mills*, 15-596. **Action must be founded on fraud or mistake:** *State v. Spencer*, 114-778; *McNamee v. Alexander*, 109-246; *Hoyt v. Rich*, 20-677. **The right to sue is limited to one claiming title to the land:** *Jones v. Riggs*, 154-281. **Action to set aside several grants in different counties:** *Hardwood Co. v. Waldo*, 161-196. **A grant cannot be attacked collaterally:** *Waldo v. Wilson*, 173-689.

7595. Judgment recorded in secretary of state's office. If, upon verdict or demurrer, the court believe that the patent or grant was made against law or obtained by fraud, surprise, or upon untrue suggestions, they may vacate the same; and a copy of such judgment, after being recorded at large, shall be filed by the petitioner in the secretary's office, where it shall be recorded in a book kept for that purpose; and the secretary shall note in the margin of the original record of the grant the entry of the judgment, with a reference to the record in his office.

Rev., s. 1749; Code, s. 2787; R. C., c. 42, s. 39.

7596. Action by state to vacate grants. An action may be brought by the attorney-general, in the name of the state, for the purpose of vacating or annulling letters patent granted by the state, in the following cases:

1. When he has reason to believe that such letters patent were obtained by means of some fraudulent suggestion or concealment of a material fact, made by the person to whom the same were issued or made, or with his consent or knowledge; or

2. When he has reason to believe that such letters patent were issued through mistake, or in ignorance of a material fact; or

3. When he has reason to believe that the patentee, or those claiming under him, have done or omitted an act, in violation of the terms and conditions on which the letters patent were granted, or have by any other means forfeited the interest acquired under the same.

Rev., s. 1750; Code, s. 2788; C. C. P., s. 367.

Section only applicable where, upon canceling letters, land would revert in state: *Henry v. McCoy*, 131-589; *State v. Bland*, 123-739; *State v. Bevers*, 86-588. License is not letters patent, and this section not applicable thereto: *Hargett v. Bell*, 134-396. **Action is brought only by attorney-general:** *Jones v. Riggs*, 154-281. **Attorney-general cannot of his own motion bring action under this section to vacate charter of incorporation:** *Attorney-General v. R. R.*, 134-481. **Grant can only be vacated on part of state by proceedings under this section:** *Kimsey v. Munday*, 112-830; see *Crow v. Holland*, 15-417. **Action must be founded on fraud or mistake:** *State v. Spencer*, 114-778; *Attorney-General v. Carver*, 34-234; see section 7594. **Section referred to in** *Harris v. Norman*, 96-60; *Ray v. Castle*, 79-585; *McDowell v. Asbury*, 66-449.

ART. 8. PHOSPHATE BEDS

7597. Phosphate beds in navigable waters entered. Any resident of this state who shall make affidavit before the clerk of the superior court of any county through which such navigable stream may flow, that he has discovered in any navigable stream or waters of this state any phosphate rock or phosphate deposit therein shall have authority and power to enter under the entry laws of this state so much of the bed of any such navigable stream or waters as shall not exceed in any one entry two miles in length up the middle of any such stream or water for the purpose of digging, mining, or removing any such deposit or rock.

Rev., s. 1751; 1891, c. 476.

7598. Grant obtained; term; royalty. Upon such affidavit being filed with the entry-taker, and upon a survey and plot being made of such entry by the county surveyor as is now required by law in cases of entry of land, being made and certified to the secretary of state with a copy of such affidavit and entry so made, the secretary of state shall issue a patent or grant to such person, his heirs or assigns, for a term of twenty-five years for the land, with the proviso and condition inserted therein that the grantee therein shall pay to the treasurer of the state at the end of every three months a royalty of one dollar per ton for every ton of the crude phosphate rock or deposit mined, dug, or removed.

Rev., s. 1752; 1891, c. 476, s. 2.

7599. Exclusive right to mine; bond for royalty. Such grantee, his heirs or assigns, shall have the exclusive right to mine, dig, or remove any such phosphate rock or deposit for the term of twenty-five years from the date of the patent upon paying the royalty of one dollar specified in the patent: Provided, however, that as a condition precedent to the granting of any such patent each company or person making any such entry shall enter into bond with sufficient surety in the penal sum of five thousand dollars, conditioned for the making of faithful and true returns to the treasurer of the state of the number of tons of phosphate rock and phosphate deposit so dug, mined, or removed, at the end of every month, and the punctual payment to the treasurer of the royalty of one dollar per ton upon every ton of the crude rock, without being steamed or dried, at the end of every three months, and the bond and sureties shall be subject to the approval now required by law for the bonds of state officers.

Rev., s. 1753; 1891, c. 476, s. 3.

7600. Navigation not obstructed by grantee. No grant issued under the provisions of this article shall confer upon the person receiving the same the right to obstruct the navigation of any such stream or water, nor confer upon such person or his assigns any other right than that granted to take, mine, or dig phosphate rock or deposit therefrom.

Rev., s. 1754; 1891, c. 476, s. 4.

7601. Fees for issuing grant for phosphate beds. No fee or cost shall be charged or collected by the secretary of state of any person or corporation receiving any

patent or grant under this article, except the fee allowed by law to the secretary of state for issuing a patent under the entry laws of the state.

Rev., s. 1755; 1891, c. 476, s. 5.

7602. Failure to operate for two years vacates grant. Any person or corporation who shall fail to dig, mine or remove phosphate rock or deposit from any such stream or water to which he or it may be entitled under any patent or grant issued under the provisions of this article for the period of two years from the date of the patent, or after beginning digging, mining, or removing the same, shall fail to continue to so dig, mine, or remove the same for the period of two years, shall forfeit all rights therein granted, and the territory shall immediately thereupon become subject to entry under the provisions of this article without making the affidavit of the discovery of any such deposits or rocks.

Rev., s. 1756; 1891, c. 476, s. 6.

7603. Mining phosphate without grant. Any person or corporation resident of this state shall have the right to mine, dig, or remove phosphate rock or deposits from any of the navigable streams or waters in this state to which no exclusive patent or grant may have been issued, upon such person or corporation first entering into bond in the penal sum of five thousand dollars, payable to the treasurer of the state, for the payment of the same royalty, in the same manner and under the same regulations as are prescribed in this article for persons operating under a grant; but nothing in this section shall be construed to give to any such person or corporation any exclusive franchise or privilege to dig, mine, or remove any such phosphate rock or deposit from any stream or water of this state.

Rev., s. 1757; 1891, c. 476, s. 7.

7604. Mining phosphate rock in rivers. If any person shall dig, mine, or remove any phosphate rock or deposit from any of the navigable waters of this state, except for the purpose of prospecting and discovering as allowed by law, he shall be guilty of a misdemeanor, and shall also forfeit and pay ten dollars per ton for every ton of phosphate rock or deposit so mined, dug, or removed, one-half to the use of the state and the other one-half to go to the informer.

Rev., s. 3744; 1891, c. 476, s. 8.

SUBCHAPTER II. LANDS CONTROLLED BY STATE BOARD OF EDUCATION

ART. 9. SWAMP LANDS RECLAIMED

7605. Power in state board of education. The state board of education is invested with full power to adopt all necessary ways and means for causing so much of the swamp lands to be surveyed as it may deem capable of being reclaimed, and shall cause to be constructed such canals, ditches, roads, and other necessary works of improvement as it may deem proper and necessary.

Rev., s. 4036; Code, s. 2508; R. C., c. 66, s. 5; R. S., c. 67, s. 5; 1885, c. 70, ss. 1, 2, 4; 1899, c. 253, s. 5.

7606. Expenditures limited. The state board of education shall not lend or expend any part of the public moneys, stocks, funds, or property vested in it by

law, or under its control, for the purpose of reclaiming lands, or for any other purpose whatsoever, except by the direction of the general assembly.

Rev., s. 4037; Code, ss. 2515, 2530; R. C., c. 66, s. 12; 1870-1, c. 279.

7607. Purchase and exchange of land. Whenever, in the process of draining, it may be necessary, in order to prevent a sacrifice of the interests of the state, to purchase small tracts owned by individuals, the corporation may buy them, or exchange for them some other portions of the swamp lands; and the lands thus acquired by the corporation shall be held by it as other swamp lands.

Rev., s. 4038; Code, s. 2517; R. C., c. 66, s. 14.

7608. Title vested in board by written consent. Whenever it is necessary to construct any such works on the lands of any individual proprietor, his written consent, without any formal deed of conveyance of the lands necessary to the work and its future enjoyment, shall vest the title thereof in the corporation forever; and when any infant or person non compos mentis or feme covert is owner thereof, his guardian is authorized to give such consent; and the feme covert and her husband may do so without any private examination; and the consent so given shall be valid for all purposes.

Rev., s. 4039; Code, s. 2509; R. C., c. 66, s. 6; R. S., c. 67, s. 6.

7609. Condemnation of lands. Whenever the consent of the proprietor shall be withheld, the corporation's agents may enter on the lands and lay off so much as may be necessary to be used in such work, the value of which shall be assessed to the proprietor according to law; and, upon the payment thereof, the title shall be vested in the corporation forever. In the assessment of valuation, the benefit that will accrue to the proprietor by reason of the improvement may be likewise reckoned and set off against the damages. The proceedings for such condemnation shall be the same as are provided for condemnation of lands by railroad corporations. And the corporation's officers and agents shall have a right to enter upon the lands of all persons whomsoever, for the purpose of surveying.

Rev., s. 4040; Code, ss. 2510, 2513; R. C., c. 66, s. 7; R. S., c. 67, s. 7.

7610. Private lands assessed for benefits. When there are lands owned by individuals which can be reclaimed by reason of the canals, ditches, or other works of the corporation, the same shall be assessed to contribute an equitable proportion of the cost of such works; which assessment shall be made by the board or a board of commissioners appointed by them, and the same shall be charged on the lands; but the corporation, by contract with individual proprietors, may agree upon the assessment, and accept payment thereof in labor or money.

Rev., s. 4041; Code, s. 2511; R. C., c. 66, s. 8; R. S., c. 67, s. 8.

7611. Regulations for surveying, reclaiming, and assessing. The state board of education may enact all necessary rules and regulations for surveying and reclaiming the swamp lands; for assessing the lands of individuals which may be improved by the works, and for collecting assessments; and the assessments shall be published weekly for five weeks in one of the newspapers published in Raleigh, and also filed in the office of the clerk of the superior court of the county wherein the lands assessed are situate. If no objections are filed at the court next after

such advertisement, the assessments shall be confirmed by the court and the lands adjudged liable for the amount, and execution may be issued for the sale thereof to satisfy the same, on motion to the court for that purpose; and if any reasons be shown against the assessments, they shall be heard and determined by the court, and the assessments shall be increased or diminished, as the court shall adjudge.

Rev., s. 4042; Code, s. 2512; R. C., c. 66, s. 9; R. S., c. 67, s. 9; 1899, c. 253; 1901, c. 529.

7612. Engineer, surveyor, and other servants employed. The state board of education may appoint an engineer and surveyor and other servants to plan the works directed by this subchapter, and such board may annually appoint an agent to superintend and supervise all the swamp lands belonging to the state board of education.

Rev., s. 4043; Code, ss. 2512, 2523; R. C., c. 66, ss. 9, 20; R. S., c. 67, s. 9; 1854, c. 48; 1899, c. 253, ss. 1, 2, 5; 1901, c. 529.

7613. Agent's duties. Such agent shall devote his entire attention to the business; abandon all prior engagements that may conflict with the interest of the state board of education; aid and assist counsel in the preparation and trial of all suits that may be directed by the corporation; collect information as to the location and value of all such lands; survey or have surveyed such tracts of such lands, or such other lands necessary to ascertain the location of lands belonging to the corporation as he may deem necessary, under the direction of the corporation. He shall make reports from time to time to the corporation of all the information he obtains, with such suggestions as he may deem proper; and shall prepare a statement of each tract of land owned by the corporation and its location, quantity, as well as ascertained and probable value, distinguishing between those tracts the title to which is doubtful or good; and this statement shall be recorded by him in a book to be kept by the corporation and in a manner, by index or otherwise, easy for reference.

Rev., s. 4044; Code, s. 2524; R. C., c. 66, s. 21; 1899, c. 253, s. 3.

7614. Agent may be removed. The agent may be removed by the state board of education at any time and another appointed to supply the vacancy, the agent removed being paid a pro rata compensation. The agency may be continued in the discretion of the board.

Rev., s. 4045; Code, s. 2525; R. C., c. 66, s. 22; 1899, c. 253, s. 4; 1901, c. 529.

ART. 10. LANDS SOLD FOR TAXES

7615. Title vested in state board of education. The title of all lands acquired by the state by virtue of being sold for taxes is hereby vested in the state board of education.

1917, c. 209.

7616. Protection of interest in lands sold for taxes. Whenever any lands in which the state board of education has an interest, by way of mortgage or otherwise, are advertised to be sold for any taxes, special assessment, or under any lien, the state board of education is authorized, if in its judgment it is necessary

to protect the interest of the board, to appear at any sale of such lands and to buy the same as any other person would, and for the purpose of paying therefor use any funds which the state board of education may have on hand, or, if necessary, borrow the money with which to make such purchase and to execute its notes therefor, and may use any funds coming to the state board of education from the sale of any property or otherwise to pay such notes.

1917, c. 246.

ART. 11. CONTROVERSIES CONCERNING LANDS

7617. Title presumed in the board; tax titles. In all controversies and suits for any of the swamp lands, to which the state board of education or its assigns shall be a party, the title to such lands shall be taken and deemed to be in that corporation or its assigns until the other party shall show that he has a good and valid title to such lands in himself.

In all controversies touching the title to or the right of possession to any lands claimed by the state, the state board of education or the university of North Carolina, under any sale for taxes at any time heretofore made or which hereafter may be made, the deed of conveyance made by the sheriff or other officer or person making such sale, or who may have been authorized to execute such deed, shall be presumptive evidence that the lands therein mentioned were, at the time the lien for such taxes attached and at the time of the sale, the property of the person therein designated as the delinquent owner; that such lands were subject to taxation; that the taxes were duly levied and assessed; that the lands were duly listed; that the taxes were due and unpaid; that the manner in which the listing, assessment, levy, and sale were conducted was in all respects as the law directed; that all the prerequisites of the law were duly complied with by all officers or persons who had or whose duty it was to have had any part or action in any transaction relating to or affecting the title conveyed or purporting to be conveyed by the deed, from the listing and valuation of the property up to the execution of the deed, both inclusive; and that all things whatsoever required by law to make a good and valid sale and vest the title in the purchaser were done, and that all recitals in such deed contained are true as to each and every of the matters so recited.

In all controversies and suits involving the title to real property claimed and held under and by virtue of a deed made substantially as above the person claiming title adverse to the title conveyed by such deed shall be required to prove, in order to defeat such title, either that the real property was not subject to taxation for the year or years named in the deed, that the taxes had been paid before the sale, that the property had been redeemed from the sale according to the provisions of law, and that such redemption was had or made for the use or benefit of persons having the right of redemption under the laws of this state, or that there had been an entire omission to list or assess the property or to levy the taxes or to sell the property; but no person shall be permitted to question the title acquired under such sale and deed without first showing that he or the person under whom he claims title had title to the property at the time of the sale, and that all taxes due upon the property have been paid by such person or the person under whom he claims title.

Rev., s. 4047; Code, s. 2527; R. C., c. 66, s. 24; 1842-3, c. 36, s. 3; 1889, c. 243.

Title presumed to be in board of education: Board of Education v. Lumber Co., 158-314; Weston v. Lumber Co., 162-165—but when a prior grant is shown, such presumption does not exist, s. c., 169-398; Shingle Co. v. Lumber Co., 178-221. As to the nature of the land to give rise to this presumption, see Beer v. Lumber Co., 170-337. See sections 7540-7542.

The presumption as to validity of tax sales under this section explained in Board of Education v. Remick, 160-563. See, also, section 8034. The provision as to forfeiture for failure to pay taxes (construed in Parrish v. Cedar Co., 133-478; Lumber Co. v. Lumber Co., 135-743; s. c., 137-444) is not now in the statute: Board of Education v. Remick, 160-563. As to validity of tax sale made under act of 1798, see Shingle Co. v. Lumber Co., 178-221.

7618. Statute of limitations. No statute of limitation shall affect the title or bar the action of the state board of education or its assigns, unless the same would protect the person holding and claiming adversely against the state; and no statute of limitation shall be a bar to the state board of education or of its assigns in the trial of any action in any court of competent jurisdiction against any person, firm, or corporation for damages for timber heretofore or hereafter cut and removed from lands owned by the board of education or for any other acts of trespass committed on such lands.

Rev., s. 4048; Code, s. 2528; R. C., c. 66, s. 25; 1842, c. 36, s. 5; 1917, c. 287.

Section referred to in Tillery v. Lumber Co., 172-296; Board of Education v. Lumber Co., 158-314.

7619. Actions by board; counsel; compromise. The state board of education may employ counsel learned in the law to aid and assist it in the investigation and prosecution of its title to any of the swamp lands; and may compromise upon such terms as to it shall seem reasonable and just, for the title, so as to secure the corporation an indefeasible right in such lands.

Rev., s. 4051; Code, s. 2516; R. C., c. 66, s. 13.

7620. Agreement with others to prosecute or survey. The state board of education has full power and authority to agree with any person to prosecute its claim to any swamp lands in any county or counties, or to survey and identify its lands in such counties, and allow to such person a share of any such land as a compensation for his services.

Rev., s. 4052; Code, s. 2526; R. C., c. 66, s. 23; 1854, c. 48.

ART. 12. SALE OF LANDS

7621. Sale of swamp lands. The state board of education is authorized and directed to sell and convey the swamp lands at public or private sale at such times, for such prices, in such portions, and on such terms as to it may seem proper; but it shall not sell at a price less than twelve and one-half cents per acre. It shall report each sale to the next session of the general assembly. The proceeds, as also money received on entries of vacant land, shall become a part of the state literary fund. The corporation shall not sell any canal by it constructed under this subchapter.

Rev., s. 4049; Code, ss. 2514, 2515, 2529; R. C., c. 66, s. 12; 1872-3, c. 194, s. 2; 1889, c. 243, s. 4.

7622. Reservation to the state. In any sale which shall be made by the state board of education the following powers shall be expressly reserved to the state, to be exercised under such laws as are now or may be enacted by the general assembly:

1. To make any expedient regulations respecting the repair of the canals which have been cut by the state, or enlargement of such canals.

2. To impose taxes on the lands benefited by those canals for their repair, and which shall not be closed.

3. That the navigation of the canals shall be free to all persons, subject to a right in the state to impose tolls.

4. That all landowners on the canals may drain into them, subject only to such general regulations as now are or hereafter may be made by the general assembly in such cases.

5. That the roads along the banks of the canals shall be public roads.

Rev., s. 4050; Code, s. 2534; 1872-3, c. 118.

7623. Forfeiture for failure to register deeds. All the grants and deeds for swamp lands, heretofore made, must have been proved and registered in the county where the lands are situate, within twelve months from November first, one thousand eight hundred and eighty-three, and every such grant or deed, not being so registered within that time, shall be void, and the title of the proprietor in such lands shall revert to the state; but the provisions of this section shall be applicable to the swamp lands only which have been surveyed or taken possession of by, or are vested in, the state board of education or its agents.

Rev., s. 4046; Code, ss. 2513, 3866; R. C., c. 66, s. 10; R. S., c. 67, s. 10.

Section referred to in *McCall v. Wilson*, 101-598.

CHAPTER 129

STATE OFFICERS

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ART. 1. CLASSIFICATION AND GENERAL PROVISIONS

7624. Public state officials classified. The public officers of the state are legislative, executive, and judicial. But this classification shall not be construed as defining the legal powers of either class.

Rev., s. 5323; Code, s. 3317; 1868-9, c. 270, ss. 1, 2.

7625. Legislative officers. The legislative officers are:

1. Fifty senators;
2. One hundred and twenty members of the house of representatives.
3. A speaker of the house of representatives;
4. A clerk and assistants in each house;
5. A doorkeeper and assistants in each house;
6. As many subordinates in each house as may be deemed necessary.

Rev., s. 5324; Code, s. 3318; 1868-9, c. 270, s. 3.

7626. Executive officers. Executive officers are either:

1. Civil.
2. Military.

Civil executive officers are:

1. General, or for the whole state.
2. Special, or for special duties in different parts of the state.
3. Local, or for a particular part of the state.

The general civil executive officers of this state are as follows:

1. A governor.
2. A lieutenant governor.
3. Private secretary for the governor.
4. A secretary of state.
5. An auditor.
6. A treasurer.
7. An attorney-general.
8. A superintendent of public instruction.
9. The members of the governor's council.
10. A commissioner of agriculture.
11. A commissioner of labor and printing.
12. An insurance commissioner.

Rev., s. 5325; Code, s. 3319; 1868-9, c. 270, ss. 24, 25, 26; 1899, c. 373, c. 54, ss. 3, 4; 1901, c. 479, s. 4.

7627. Executive officers; election; term; induction into office. The executive department shall consist of a governor, a lieutenant governor, a secretary of state, an auditor, a treasurer, a superintendent of public instruction, and an attorney-general, who shall be elected for a term of four years by the qualified electors of the state, at the same time and places and in the same manner as members of the general assembly are elected. Their term of office shall commence on the first day of January next after their election and continue until their successors are elected and qualified. The return of every election for officers of the executive department shall be sealed up and transmitted to the seat of government by the returning officers, directed to the speaker of the house of representatives, who shall open and publish the same in the presence of a majority of the members of both houses of the general assembly. The persons having the highest number of votes respectively shall be declared duly elected; but if two or more be equal and highest in votes for the same office, then one of them shall be chosen by joint ballot of both houses of the general assembly. Contested elections shall be determined by a joint ballot of both houses of the general assembly in such manner as shall be prescribed by law. On the first Tuesday after the convening of the general assembly, following the election of any or all state officers of the executive department and of the commissioner of agriculture and the commissioner of labor and printing, there shall be a joint session of the house of representatives and senate in the hall of the house of representatives, at eleven o'clock in the forenoon, when and where the speaker of the house of representatives shall proceed, in compliance with the provisions of the constitution above set forth, to open and publish the vote for governor and other officers of the executive department and for the commissioner of agriculture and the commissioner of labor

and printing cast at the last preceding election, and as soon as the result of the election shall be ascertained and published, as provided in this section, the person so ascertained and published to be elected governor at such election shall, in the presence of the joint session of the two houses of the general assembly, held as herein provided, take the oath of office prescribed by law and be immediately inducted into the office of governor. Should the governor-elect not be present at such joint session, then he may, as soon thereafter as he may deem proper, take the oath of office before some justice of the supreme or judge of the superior court and be inducted into office. As soon as the result of such election as to other officers of the executive department named in article three, section one, of the constitution, and as to the commissioner of agriculture and the commissioner of labor and printing, shall be ascertained and published as provided herein, the officers elected to such offices shall, as soon as may be, take the oath of office prescribed by law for such officers and be inducted into the offices to which they have been elected.

Rev., s. 5326; Const., art. 3, ss. 1, 3; 1897, c. 1, ss. 1, 2, 3.

7628. Executive officers and certain boards report to governor; reports transmitted to general assembly. It shall be the duty of the officers of the executive department to submit their respective reports to the governor to be transmitted by him with his message to the general assembly.

Rev., s. 5373; 1813, c. 60, s. 2.

NOTE.—For reports of state institutions, see State Departments, Institutions, and Commissions.

For report of state treasurer, see this chapter, article Treasurer.

ART. 2. PAYMENT OF MONEYS COLLECTED

7629. Officers collecting state moneys pay to state treasury monthly. Each and every officer of the state or of any department thereof who is authorized by law to collect any fee, license tax, tag tax, or who collects money from any corporation or person, or partnership, by authority of any statute of this state, shall pay the same to the state treasurer on the tenth day of the calendar month next following, which payment shall be accompanied by an itemized statement showing from what sources and under what statutes such amounts have been collected, and a copy of said statement shall at the same time be filed in the office of the state auditor.

1919, c. 117, s. 1.

7630. Expenses paid by warrants of state auditor; statements filed. All salaries, purchases of equipment and expenses authorized by law to be paid out of the various funds herebefore mentioned shall be paid by warrant drawn by the state auditor on the state treasurer. The officer of state or the head of any department thereof shall file with the state auditor an itemized statement of the salaries, bills for purchases of equipment and other expenses of his department, and the state auditor shall draw warrants on the state treasurer for the payment of all salaries, purchases of equipment, and expenses as authorized by law, to be paid by the said officer of state or head of any department thereof, as evidenced by statements so approved and filed. The state treasurer is hereby authorized and directed to pay said warrants.

1919, c. 117, s. 2.

7631. Traveling expenses on state's business. When, to efficiently and properly carry into effect and execute any of the duties imposed by his appointment or by the provision of any statute of this state and provide for the expenses thereof, it is required that any officer of the state or any employee of any department thereof shall travel from place to place, such traveling and other expenses as shall be required shall be approved by said officer or head of the department whose employee incurs such expenses, and certified monthly to the state auditor in itemized form, and the state auditor is directed to draw his warrants upon the treasurer for such amounts.

1919, c. 117, s. 3.

7632. Emergency traveling fund; heads of departments may retain. For the purpose of providing an emergency or contingent fund to cover the traveling expenses or other authorized expenses of any officer of state or of any department of state falling within the provisions of section 7631, such officer or head of the department is permitted to retain in his hands, from the moneys, fees, or licenses so collected or received by him from the sources named in section 7629, or draw from the state treasury an amount not to exceed at any one time the sum of two thousand dollars, and from this emergency or contingent fund such officer or head of department is authorized to advance and pay the traveling expenses of himself or other employees, when the same shall be required, until vouchers covering said expense accounts can be issued by the auditor and paid by the treasurer monthly as in section 7631 provided. At the expiration of his term of office the said officer of the state or head of department shall pay to the state treasurer the money retained by him under this section.

1919, c. 117, s. 4.

7633. Contingent funds accounted for and statements filed with budget commission. Each and every official of the state, or of any department thereof, to whom is given by law any special contingent or other fund to be used in the work of the said official or department for contingent or other purposes, shall on or before the first day of November of each year file with each member of the legislative examining committee and with the budget committee a full and itemized statement in detail of all amounts received, with the source and date thereof, and amounts expended, to whom and for what purpose paid out, with a statement of any balance unexpended. It shall be the duty of any such official or head of department to give to the said legislative examining committee or budget committee, any further information or details that they may desire.

1919, c. 117, s. 5.

7634. Construction. This article shall not be construed as requiring the payment to the state treasurer of any money or funds collected for and directed to be paid to any party other than the state.

1919, c. 117, s. 6.

ART. 3. THE GOVERNOR

7635. Governor to reside in Raleigh; mansion and accessories. The governor shall reside in the city of Raleigh during his continuance in office. A convenient

and commodious furnished dwelling-house, supplied with necessary lights, fuel, and water, shall be provided for his accommodation; and an automobile and driver shall be provided and maintained for the use of the executive mansion.

Rev., s. 5327; Code, ss. 3325, 3326; 1868-69, c. 270, ss. 32, 33; 1885, c. 244; 1919, c. 307.

7636. Powers and duties of governor. In addition to the powers and duties prescribed by the constitution, the governor has the powers and duties prescribed in this and the following sections:

1. He is to supervise the official conduct of all executive and ministerial officers; and when he shall deem it advisable he shall visit all state institutions for the purpose of inquiring into the management and needs of the same, and for the purpose of paying the expenses of such visitation the auditor is hereby directed to draw an order on the treasurer in favor of the governor to pay his expenses for each visitation.

2. He is to see that all offices are filled, and the duties thereof performed, or in default thereof apply such remedy as the law allows, and if the remedy is imperfect, acquaint the general assembly therewith.

3. He is to make the appointments and supply the vacancies not otherwise provided for in all departments.

4. He is the sole official organ between the government of this state and other states, or the government of the United States.

5. He has the custody of the great seal of the state.

6. If he be apprised by the affidavits of two responsible citizens of the state that there is imminent danger that the statute of this state forbidding prize fighting is about to be violated, he shall use, as far as necessary, the civil and military power of the state to prevent it, and to have the offenders arrested and bound to keep the peace.

Rev., s. 5328; Code, s. 3320; 1868-9, c. 270, s. 27; 1870-1, c. 111; 1883, c. 71; 1895, c. 28, s. 5; 1905, c. 446.

NOTE.—For the power of the governor to execute deeds for lands whose title is vested in the state for the use of any state institution, see *State Departments and Institutions*.

As to supervising conduct of executive and ministerial officers, see *Russell v. Ayer*, 120-180. Can bring mandamus proceedings to compel them to perform duty: *Ibid*.

For governor's power to appoint persons to fill offices, originally, or to fill vacancies, see art. 3, secs. 10 and 13; art. 4, secs. 25 and 28; art. 14, sec. 5, of the state constitution. The right of the governor to appoint is limited to constitutional offices and where the constitution so provides: *Salisbury v. Croom*, 167-223. Where he is authorized to appoint by and with the consent of the senate, he may make an ad interim appointment: *Ibid*.

7637. May convene council of state. The governor may convene his council for consultation whenever he may deem it proper.

Rev., s. 5329; Code, s. 3335; 1868-9, c. 270, s. 40.

7638. Private secretary; official correspondence preserved; books produced before general assembly. The governor shall appoint a private secretary, who shall enter in books kept for that purpose all such letters, written by and to the governor, as are official and important, and such other letters as the governor shall think necessary. Such books shall be deposited in the office of the executive by the private secretary, and there carefully preserved, and the governor shall produce the same before the general assembly whenever requested.

Rev., s. 5330; Code, ss. 3326, 3327; 1868-9, c. 270, ss. 33, 34.

7639. Records kept; certain original applications preserved. The governor shall cause to be kept the following records:

1. A register of all applications for pardon, or for commutation of any sentence, with a list of the official signatures and recommendations in favor of such application.

2. An account of all his official expenses and disbursements, including the incidental expenses of his department, and the rewards offered by him for the apprehension of criminals, which shall be paid upon the warrant of the auditor.

These records and the originals of all applications, petitions, and recommendations and reports therein mentioned shall be preserved in the office of the governor, but when applications for offices are refused he may, in his discretion, return the papers referring to the application.

Rev., s. 5331; Code, ss. 3322, 3323; 1868-9, c. 270, ss. 29, 30; 1870-1, c. 111.

7640. May employ counsel in cases wherein state is interested. Whenever any suit or legal proceeding is pending against the state, or which may result in any claim against the state, or affect the title of this state to any property, he may direct the attorney-general to appear on behalf of the state, and may employ such additional counsel as he may judge expedient. In case the attorney-general shall state to the governor that it is impracticable for him to render legal services to any state institution, including the state's prison, the governor may, if he deem it necessary, employ such counsel as in his judgment should be employed; and no institution supported in whole or in part by the state shall employ any counsel except by the consent and approval of the governor. In every case, civil or criminal, in any court in the state, or in any other state or territory, or in any United States court, in which the state of North Carolina is interested, the governor may employ such counsel as he may deem proper or necessary to represent the interest of the state. In all cases in which the governor is authorized to employ counsel he may direct the auditor to draw his warrant upon the treasurer to compensate such counsel.

Rev., s. 5332; Code, ss. 3320, 3324; 1868-9, c. 270, s. 6; 1870-1, c. 111; 1873-4, c. 160, s. 2; 1883, c. 71; 1901, c. 744.

7641. To appoint a day of thanksgiving. The governor is directed to set apart a day in every year, and by proclamation give notice thereof, as a day of solemn and public thanksgiving to Almighty God for past blessings and of supplication for His continued kindness and care over us as a state and a nation.

Rev., s. 5333; Code, s. 3334; 1868-9, c. 270, s. 39.

7642. Form and contents of applications for pardon. Every application for pardon must be made to the governor in writing, signed by the party convicted, or by some person in his behalf. And every such application shall contain the grounds and reasons upon which the executive pardon is asked, and shall be in every case accompanied by a certified copy of the indictment, and the verdict and judgment of the court thereon.

Rev., s. 5334; Code, s. 3336; 1869-70, c. 171; 1870-1, c. 61.

Application for pardon is considered only after conviction: *State v. Newell*, 172-933; *In re Williams*, 149-436. See section 7739.

7643. Conditional pardons may be granted. In any case in which the governor is authorized by the constitution to grant a pardon he may, upon the petition of the prisoner, grant it, subject to such conditions, restrictions, and limitations as he considers proper and necessary, and he may issue his warrant to all proper officers to carry such pardon into effect in such manner as he thinks proper.

Rev., s. 5335; 1905, c. 356.

The governor may grant a conditional pardon, which takes effect upon delivery, and is irrevocable if condition is complied with: *In re Williams*, 149-436.

7644. Governor's duties when conditions of pardon violated. If a prisoner who has been pardoned upon conditions to be observed and performed by him violates such conditions, or any of them, the governor, upon receiving information of such violation, shall forthwith cause him to be arrested and detained until the case can be examined by him. The governor shall examine the case of such prisoner, and if it appears by his own admission or by such evidence as the governor may require that he has violated the condition of his pardon, the governor shall order him remanded and confined for the unexpired term of his sentence; said confinement, if the prisoner is under any other sentence of imprisonment at the time of said order, to begin upon expiration of such sentence. In computing the period of his confinement the time between the conditional pardon and subsequent arrest shall not be taken to be a part of the time of his sentence. If it appears to the governor that he has not broken the conditions of his conditional pardon he shall be released and his conditional pardon shall remain in force.

Rev., s. 5336; 1905, c. 356, ss. 2, 3.

7645. Duty of sheriff and clerk on pardon granted. If a prisoner is pardoned conditionally or unconditionally, or his punishment is commuted, the officer to whom the warrant for such purpose is issued shall, as soon as may be after executing it, make return thereof, signed by him, with his doing thereon, to the governor's office, and shall file in the office of the clerk of the court in which the offender was convicted an attested copy of the warrant and return, and the clerk shall file the same in his office and subjoin a brief abstract thereof to the record of the conviction and sentence, and at the next regular term of said court said warrant shall be entered upon the minutes of the court.

Rev., s. 5337; 1905, c. 356, s. 4.

The sheriff cannot return a pardon, after its delivery and compliance with the condition, and thereby defeat the effect of it: *In re Williams*, 149-436.

Upon pardon granted the defendant is entitled to return of fine paid if it is still under control of the court; otherwise when it has been paid over to treasurer: *Bynum v. Turner*, 171-86.

7646. To procure great seal of state; its description. The governor shall procure for the state a seal, which shall be called the great seal of the state of North Carolina, and shall be two and one-quarter inches in diameter, and its design shall be a representation of the figures of Liberty and Plenty, looking toward each other, but not more than half fronting each other and otherwise disposed as follows: Liberty, the first figure, standing, her pole with cap on it in her left hand and a scroll with the word "Constitution" inscribed thereon in her right hand.

Plenty, the second figure, sitting down, her right arm half extended towards Liberty, three heads of wheat in her right hand, and in her left, the small end of her horn, the mouth of which is resting at her feet, and the contents of the horn rolling out; there shall also be inserted thereon the words “*esse quam videri.*” It shall be the duty of the governor to file in the office of secretary of state an impression of the great seal, certified to under his hand and attested by the secretary of state, which impression so certified the secretary of state shall carefully preserve among the records of his office.

Rev., s. 5339; Code, ss. 3328, 3329; 1868-9, c. 270, s. 35; 1883, c. 392; 1893, c. 145.

7647. Affixing great seal a second time to public papers. In all cases where any person may find it necessary to have the great seal of the state put again to any public paper, other than a grant for lands, he may prefer his petition to the governor and council, who shall, if they deem the same proper, direct the seal to be put thereto.

Rev., s. 5338; Code, s. 3333; 1868-9, c. 270, s. 38.

7648. To procure seals for departments and courts. The governor shall also procure a seal for each department of the state government to be used for attesting and authenticating grants, proclamations, commissions, and other public acts, in such manner as may be directed by law and the usage established in the public offices; also a seal for every court of record in the state, for the purpose of authenticating the papers and records of such court. All such seals shall be delivered to the proper officers, who shall give a receipt therefor and be accountable for their safe-keeping.

Rev., s. 5340; Code, ss. 3328, 3332; 1868-9, c. 270, ss. 35, 37; 1883, c. 71.

7649. Seal of department of state described. The seal of the department of state shall be two inches in diameter and shall be of the same design as the great seal of the state, with the words “*State of North Carolina, Department of State,*” surrounding the figures.

Rev., s. 5341; Code, s. 3330; 1883, c. 238.

7650. To provide new seals when necessary. Whenever the great seal of the state, the seal of any department or any seal of a court of record shall be lost, or so worn or defaced as to render it unfit for use, the governor shall provide a new one, and when new seals are provided the former ones shall not be used.

Rev., s. 5342; Code, s. 3331; 1868-9, c. 270, s. 36.

7651. Payment for seals. The treasurer shall pay the expense of procuring all seals provided for in this chapter, upon the warrant of the auditor.

Rev., s. 5343; Code, s. 3332; 1868-9, c. 270, s. 37; 1883, c. 71.

ART. 4. SECRETARY OF STATE

7652. Office and office hours. The secretary of state shall attend at his office, in the city of Raleigh, between the hours of ten o'clock a. m. and three o'clock p. m., on every day of the year, Sundays and legal holidays excepted.

Rev., s. 5344; Code, s. 3339; 1868-9, c. 270, s. 44; 1870-1, c. 111.

Referred to in *Beam v. Jennings*, 96-82.

7653. Bond of secretary of state. The secretary of state shall give bond with sufficient surety, approved by the governor and auditor, for the sum of twenty thousand dollars, payable to the state, and conditioned for the faithful performance of his duties. And the bond of the secretary of state shall be deposited in the treasurer's office for safe-keeping; and he shall take the oath prescribed for public officers.

Rev., s. 287; Code, s. 3338; 1868-9, c. 270, ss. 42, 43.

7654. Duties of secretary of state. It is the duty of the secretary of state:

1. To attend at every session of the legislature for the purpose of receiving bills which shall have become laws, and to perform such other duties as may then be devolved upon him by resolution of the two houses, or either of them.

2. To attend the governor, whenever required by him, for the purpose of receiving documents which have passed the great seal.

3. To receive and keep all conveyances and mortgages belonging to the state.

4. To distribute annually the statutes, the legislative journals and documents, and the reports of the supreme court.

5. To distribute the acts of congress received at his office in the manner prescribed for the statutes of the state.

6. To keep a receipt book, in which he shall take from every person to whom a grant shall be delivered a receipt for the same; but he may inclose grants by mail in a registered letter at the expense of the grantee, unless otherwise directed, first entering the same upon the receipt book.

Rev., s. 5345; Code, s. 3340; 1868-9, c. 270, s. 45; 1881, c. 63.

The clerk of the secretary of state has no power to certify to and affix the great seal of the state to copies of grants and other papers from the secretary of state's office to be used in evidence. The statute contemplates that this officer should do all official acts himself, and does not permit any of them to be done by a deputy: *Beam v. Jennings*, 96-82. See section 7592.

7655. To purchase stationery and fuel. The secretary of state shall purchase suitable stationery for the general assembly, the supreme court, and state library upon the best terms the same can be procured. And he shall contract with the lowest bidder, under sealed proposals, for the necessary lights and fuel for the general assembly, the public offices, and the governor's dwelling.

Rev., s. 5346; Code, s. 3341; R. C., c. 104, s. 6; 1842, cc. 48, 68; 1873-4, c. 129.

7656. Custodian of statutes, records, deeds, etc. The secretary of state is charged with the custody of all statutes and joint resolutions of the legislature, all documents which pass under the great seal, and of all the books, records, deeds, parchments, maps, and papers now deposited in his office or which may hereafter be there deposited pursuant to law, and he shall from time to time make all necessary provisions for their arrangement and preservation.

Rev., s. 5347; Code, s. 3337; R. C., c. 104, s. 105; 1868-9, c. 270, s. 41; 1873-4, c. 129.

7657. To keep records of oyster grants. The secretary of state shall keep books of records in which shall be recorded a full description of all grounds granted for oyster beds under the provisions of chapter one hundred and nineteen of the laws

of one thousand eight hundred and eighty-seven, and laws amendatory thereof, and shall keep a map or maps showing the position and limits of all public and private grounds.

Rev., s. 2381; 1887, c. 119, s. 14.

7658. Binding original statutes, resolutions, and documents. The original statutes and joint resolutions passed at each session of the general assembly the secretary of state shall immediately thereafter cause to be bound in volumes of convenient size. Each such volume shall be lettered on the back with its title and the date of its session.

Rev., s. 5348; Code, s. 3343; 1866-7, c. 71; 1868-9, c. 270, s. 46.

7659. Public, public-local, and private laws. The secretary of state shall divide the laws into three classes—public, public-local, and private laws; and it shall be his duty, at the time of making the marginal notes, to mark on the upper right-hand corner of each act the words “public” or “public-local” or “private,” and acts thus marked shall be kept separate by the state printer. The public laws and resolutions shall be published in one volume to themselves. The public-local and private laws shall be kept separate and indexed separately, but may, in the discretion of the secretary of state, be bound together in one or more volume or volumes, which volume or volumes shall be published and distributed as are now the private laws.

Rev., s. 5349; 1909, c. 473.

For other duties of secretary of state in regard to publishing laws, see sections 6108-6111.

7660. Supplies departments of general government with laws and documents. The secretary of state shall supply and transmit to the different departments of the general government and the New York historical society copies of the acts, both private and public, and the public documents and journals of the general assembly, and with the reports of the supreme court of this state.

Rev., s. 5350; Code, ss. 3601, 3603, 3344; R. C., c. 91, s. 2; 1868-9, c. 270, s. 48; 1885, c. 382.

7661. Transmits statutes and reports to other states. The secretary of state, as soon as published, shall transmit, at the expense of this state, to the executive of every state and territory in the Union, one copy of the statutes of each year, and of the reports of the supreme court, and request a similar transmission to be made to him of the statutes and reports of the higher courts of the several states and territories. When the statutes of any state or territory are received, he shall deposit one copy in the executive library, but in case only one copy is received it shall be deposited in the supreme court library.

Rev., s. 5351; Code, ss. 3321, 3344; 1868-9, c. 270, ss. 28, 48.

7662. Furnishes laws and documents to institutions of learning. The secretary of state, upon application made by any chartered institution of learning in this state, for which provision is not elsewhere made in this article, having a library of not less than five thousand volumes, shall furnish and transmit to each of such institutions, to be kept in its library, a copy of all future current supreme court reports, public and private acts of the general assembly and journals of

both houses and public documents, whenever the same shall be ready for distribution. He shall also furnish to each of such institutions, if he have them on hand, or when reprinted or otherwise obtained, one volume each of such of the supreme court reports as have not been heretofore furnished.

Rev., s. 5352; Code, s. 3619; 1881, c. 277; 1889, c. 249.

7663. Distribution of statutes. The secretary of state shall distribute copies of the public, public-local, and private laws, as follows: To the governor, lieutenant governor, treasurer, secretary of state, auditor, superintendent of public instruction, attorney-general, commissioner of agriculture, commissioner of labor and printing, insurance commissioner, corporation commission, legislative reference library, state board of health, state highway commission, state board of charities and public welfare, state geologist, superintendents of the several state hospitals for the insane, and of the several institutions for the deaf, dumb, and the blind, and of the state's prison, to the North Carolina state college of agriculture and engineering, to the several justices of the supreme court, the judges of the superior courts, the judges of the United States courts, the several solicitors and United States district attorneys, the clerks of the superior and federal courts, the sheriffs of the several counties, the several registers of deeds, members and clerks of the general assembly, and county commissioners, one copy each; to the state library, two copies; to the library of the university, three copies; to the supreme court library, eleven copies; to the library of the supreme court of the United States, one copy; to the several states and territories of the Union, including the District of Columbia, and to the Dominion of Canada, to the provinces of Canada, to Australia and to New Zealand, one copy each, and two copies to be deposited in the offices of each department of the state government; to the several justices of the peace, one copy of the public laws only.

Rev., s. 5353; Code, s. 3632; R. C., c. 93, ss. 8, 19; 1870-1, c. 111, s. 2; 1872-3, c. 45, ss. 7, 8; 1879, c. 271; 1881, c. 107; 1885, c. 82; 1891, c. 471; 1893, c. 146, s. 2; 1897, c. 135; 1901, c. 401, s. 2; 1901, c. 88; 1903, c. 801; 1919, c. 195, s. 1.

7664. Distribution of senate and house journals. The senate and house journals shall be distributed by the secretary of state, as follows: One each to the governor, lieutenant governor, secretary of state, auditor, treasurer, attorney-general, superintendent of public instruction, commissioner of agriculture, commissioner of labor and printing, insurance commissioner, corporation commission, legislative reference library, the North Carolina state college of agriculture and engineering; each senator and representative, principal, assistant, engrossing clerks, the several registers of deeds and clerks of the superior court; to the state library, twenty copies; to the library of the university, three copies.

Rev., s. 5354; Code, s. 3636; 1872-3, c. 45, s. 10; 1881, c. 16; 1901, c. 88; 1903, c. 5; 1919, c. 195, s. 2; 1919, c. 314, s. 6.

7665. Distribution of public documents. Of the public documents, seventy copies shall be delivered by the secretary of state to the secretary of the senate, as soon as printed, for the use of the senate, and one hundred and fifty to the clerk of the house for the use of the house, and the residue, three hundred and sixty-five copies, shall be distributed as follows: To the governor, lieutenant governor, treasurer, attorney-general, secretary of state, auditor, superintendent

of public instruction, commissioner of agriculture, commissioner of labor and printing, insurance commissioner, each clerk of the superior court, the superintendent of the several state hospitals for the insane, of the several institutions for the deaf, dumb, and the blind, and of the state's prison, to the North Carolina state college of agriculture and engineering, each representative and senator, and each judge of the supreme and superior courts, one copy each; to the state library, ten copies; to the senate library, ten copies; to the house library, twelve copies; to the supreme court library, five copies; to the library of the university, three copies.

Rev., s. 5355; Code, s. 3637; 1872-3, c. 45, s. 11; 1881, c. 16; 1901, c. 88; 1919, c. 314, s. 6.

7666. First copies of laws and reports to go to judiciary and solicitors. The secretary of state, immediately upon the receipt of the first bound copies of the laws and reports, shall transmit the same by mail, one each to the justices of the supreme court, and the judges, solicitors, and clerks of the superior court, and may then, in his discretion, expose for sale a limited number of each. The residue of the laws, reports, documents, and journals, as soon as they are delivered to the secretary of state, shall be transmitted and distributed by him according to this article, by express or otherwise, as he may deem best.

Rev., s. 5356; Code, ss. 3640, 3641; 1872-3, c. 45, ss. 14, 15; 1919, c. 314, s. 6.

7667. Distribution of supreme court reports. The supreme court reports shall be distributed by the secretary of state as follows: To the governor, lieutenant governor, attorney-general, treasurer, secretary of state, auditor, superintendent of public instruction, commissioner of labor and printing, commissioner of agriculture, and insurance commissioner, corporation commission, legislative reference library, the justices of the supreme court and judges of the superior courts, the judges of the federal courts residing in the state, the clerks of the supreme and superior courts, and of the United States courts for North Carolina, one copy each; to the supreme court library, twelve copies; to the state library, two copies; to the library of the supreme court of the United States, one copy; to the library of the university and to the library of Wake Forest and Trinity colleges, three copies; to each state and territory in the Union, including the District of Columbia, one copy; and to the Dominion of Canada, to the provinces of Canada, and Australia, and to New Zealand, one copy each, and one copy each to such courts in foreign states as the supreme court may direct.

Rev., s. 5357; Code, s. 3635; 1873-4, c. 34, s. 2; 1876-7, c. 164, s. 2; 1881, c. 107; 1881, c. 104, s. 2; 1885, c. 82; 1891, c. 471; 1899, cc. 37, 667; 1903, c. 689; 1919, c. 195, s. 3.

7668. Transmission of laws, etc., for use of counties and members of general assembly. The statutes, journals, and documents for the use of each county, and for members of the general assembly and other officers therein shall be transmitted to the clerk of the court of each county in such manner as the secretary of state may think best; the statutes to be transmitted as soon as practicable after adjournment of the general assembly.

Rev., s. 5358; Code, s. 3344; 1868-9, c. 270, s. 48.

7669. Expenses of transmitting publications. The transmission of all publications directed by this article to be distributed shall be at the expense of the state.

Rev., s. 5359; Code, s. 3344; 1868-9, c. 270, s. 48.

7670. Sale of laws, journals, and documents. Such laws, journals, and documents as may be printed under the provisions of this article in excess of the number directed to be distributed, the secretary of state may sell at such price as he deems reasonable, not exceeding one dollar and fifty cents for full bound copies of the public laws; and he shall pay the proceeds into the treasury. In his annual report he shall give an account of the number sold and the number on hand. He may sell such number of copies of the journals and public documents as the general assembly may by joint resolution direct at a price not exceeding ten per centum in advance of the cost.

Rev., s. 5360; Code, ss. 3344, 3642; 1868-9, c. 270, s. 48; 1872-3, c. 45, s. 16; 1881, c. 104.

7671. Reprints of supreme court reports. The secretary of state is authorized and directed to have such of the reports of the supreme court of the state of North Carolina as he has not on hand for sale republished and numbered consecutively, retaining the present numbers and names of the reporters, and by means of star pages in the margin, retaining the original numbering of the pages. The secretary of state is authorized and directed to have such reports reprinted and annotated, the reprinting to be done as other state printing is done. Such republication shall thus continue until the state shall have for sale all of such reports, and thereafter when the editions of any number or volume of the supreme court reports shall be exhausted, it shall be the duty of the secretary of state to have the same reprinted under the provisions of this section.

Rev., s. 5361; Code, s. 3634; 1885, c. 309; 1889, c. 473, ss. 1, 2, 3, 4, 6; 1907, c. 503; 1917, c. 201; 1917, c. 292.

7672. Sale of supreme court reports. The secretary of state shall sell any and all of the supreme court reports, both the current reports and the reprints, at such price as he deems reasonable, not less than one dollar and fifty cents per volume, but he may allow to regular licensed book-sellers in this state such discount as to him may seem reasonable and just. For his services in making such sales he shall receive a commission of five per centum upon his receipts, which commission he may deduct when he settles with the state treasurer, to whom he shall pay over, monthly, the moneys arising from such sales.

Rev., s. 5362; Code, s. 3635; 1889, c. 473, s. 5; 1899, c. 37; 1919, c. 195, s. 4.

See *Smith v. Thompson*, 122-215.

7673. Payment of accounts and expenses of secretary of state. The accounts of the secretary of state for the expenditures provided for in this subchapter, and all other expenses which he may incur, the payment whereof is not otherwise provided for, shall be passed on by the governor and council of state, and if allowed, shall be paid by the treasurer, on a warrant which the auditor shall draw.

Rev., s. 5363; Code, s. 3342; R. C., c. 104, s. 7; 1842, c. 48, s. 1; 1842, c. 68, s. 3; 1873-4, c. 129.

ART. 5. AUDITOR

7674. Office and office hours. The auditor shall keep his office at the city of Raleigh, and shall attend thereat between the hours of ten o'clock a. m. and three o'clock p. m., Sundays and legal holidays excepted.

Rev., s. 5364; Code, s. 3353; 1868-9, c. 270, ss. 69, 70.

7675. Duties of auditor. It is the duty of the auditor:

1. To superintend the fiscal concerns of the state.
2. To report to the governor, annually, and to the general assembly at the beginning of each biennial session thereof, a complete statement of the funds of the state, of its revenues and of the public expenditures during the preceding fiscal year, and, as far as practicable, an account of the same down to the termination of the current calendar year, together with a detailed estimate of the expenditures to be defrayed from the treasury for the ensuing fiscal year, specifying therein each object of expenditure and distinguishing between such as are provided for by permanent or temporary appropriations, and such as must be provided for by a new statute, and suggesting the means from which such expenditures are to be defrayed.
3. To suggest plans for the improvement and management of the public revenue.
4. To keep and state all accounts in which the state is interested.
5. To examine and settle the accounts of all persons indebted to the state, and to certify the amount of balance to the treasurer.
6. To direct and superintend the collection of all moneys due to the state.
7. To examine and liquidate the claims of all persons against the state, in cases where there is sufficient provision of law for the payment thereof; and where there is no sufficient provision, to examine the claim and report the fact, with his opinion thereon, to the general assembly.
8. To require all persons who have received any moneys belonging to the state, and have not accounted therefor, to settle their accounts.
9. To have the exclusive power and authority to issue all warrants for the payment of money upon the state treasurer; and it shall be the auditor's duty, before issuing the same, to examine the laws authorizing the payment thereof, and satisfy himself of the correctness of the accounts of persons applying for warrants; and to this end he shall have the power to administer oaths, and he shall also file in his office the voucher upon which the warrant is drawn and cite the law upon said warrant.
10. To procure from the books of the banks in which the treasurer makes his deposits, monthly statements of the moneys received and paid on account of the treasurer.
11. To keep an account between the state and the treasurer, and therein charge the treasurer with the balance in the treasury when he came into office, and with all moneys received by him, and credit him with all warrants drawn or paid by him.
12. To examine carefully on the first Tuesday of every month, or oftener if he deems it necessary, the accounts of the debts and credits in the bank book

kept by the treasurer, and if he discovers any irregularity or deficiency therein, unless the same be rectified or explained to his satisfaction, to report the same forthwith, in writing, to the governor.

13. To require, from time to time, all persons who have received moneys or securities, or have had the disposition or management of any property of the state, of which an account is kept in his office, to render statements thereof to him; and all such persons shall render such statements at such time and in such form as he shall require.

14. To require any person presenting an account for settlement to be sworn before him and to answer orally as to any facts relating to its correctness.

15. To annually audit the accounts of the county officers of Washington county.

Rev., s. 5365; Code, s. 3350; 1868-9, c. 270, ss. 63, 64, 65; 1883, c. 71; 1919, c. 153.

The duty of the state auditor is to examine and to liquidate the claims of all persons against the state, in cases where there is sufficient provision of law for the payment thereof, and, where there is no such provision, to examine and report the fact, with his conclusions, to the general assembly: *Burton v. Furman*, 115-166; *Boner v. Adams*, 65-639. He must use his discretion: *Ibid*.

The mode of proceeding against the auditor, who refuses to issue a warrant, discussed and explained in *Boner v. Adams*, 65-639.

Auditor can advise with attorney-general: *Bank v. Worth*, 117-156.

7676. Warrants for money paid into treasury by mistake. Whenever the governor and council of state are satisfied that moneys have been paid into the treasury through mistake, they may direct the auditor to draw his warrant therefor on the treasurer, in favor of the person who made such payment; but this provision shall not extend to payments on account of taxes nor to payments on bonds and mortgages.

Rev., s. 5366; Code, s. 3351; 1868-9, c. 270, s. 66.

7677. Accounts to be examined. His accounts shall be closed on the thirtieth day of November of each year, and shall be examined at the same time and by the same officials as provided for examination of the treasurer's accounts.

Rev., s. 5367; Code, s. 3360; 1885, c. 334.

7678. Warrants for surplus proceeds of sale of property mortgaged to state. Whenever any real property mortgaged to the state, or bought in for the benefit of the state, of which a certificate shall have been given to a former purchaser, is sold by the attorney-general on a foreclosure by notice, or under a judgment, for a greater sum than the amount due to the state, with costs and expenses, the surplus money received into the treasury, after a conveyance has been executed to the purchaser, shall be paid to the person legally entitled to such real property at the time of the foreclosure on the forfeiture of the original contract. The auditor shall not draw his warrant for such surplus money but upon satisfactory proof, by affidavit or otherwise, of the legal rights of such person.

Rev., s. 5368; Code, s. 3352; 1868-9, c. 270, s. 68.

ART. 6. TREASURER

7679. Office and office hours. The treasurer shall keep his office at the city of Raleigh, and shall attend there between the hours of ten o'clock a. m. and three o'clock p. m., Sundays and legal holidays excepted. He shall be allowed such office room as may be necessary.

Rev., s. 5369; Code, s. 3362; 1868-9, c. 270, ss. 80, 81.

7680. Bond of treasurer. The state treasurer-elect, before qualifying, shall file with the secretary of state a bond to the state in some reliable company, or companies, in the sum of two hundred and fifty thousand dollars, conditioned that he will faithfully execute the duties of his office, and the premium on such bond shall be paid out of the general state funds. Such bond, before acceptance, shall be approved by the speaker of the house of representatives and the president of the senate, and shall be deemed to extend to the faithful execution of the office of treasurer by the person elected thereto until a new election of treasurer be made and a new bond given by the person elected.

Rev., s. 288; Code, s. 3357; 1868-9, c. 270, s. 74; 1915, c. 168, s. 2.

Treasurer's bond not only safeguard against misappropriation, but against payment of illegal warrants of auditor: *Bank v. Worth*, 117-156. Treasurer no right to pay out money except upon proper warrants: *Arendell v. Worth*, 125-111.

7681. Bonds of treasurer's clerks. The clerks in the treasurer's office shall enter into good and sufficient bonds, payable to the state of North Carolina, in the following sums: The chief clerk, ten thousand dollars, the other clerks, except the clerk charged with the stenographic duties, five thousand dollars each, conditioned upon the faithful performance of the duties of their respective offices and the faithful accounting for all moneys and things of value which may come into their hands by virtue or color of their respective offices. These several bonds shall be in addition and cumulative to the official bond of the state treasurer, and shall not be construed to affect in any way the liability of the state treasurer upon his official bond. The bonds shall be approved by the treasurer, and, if given in a surety company, the costs thereof, not to exceed forty cents on the one hundred dollars of penalty, may be paid by the state.

Rev., s. 289; 1919, c. 8.

A bond by a clerk to treasurer individually is not an official bond: *Jackson v. Martin*, 136-196—and does not extend beyond clerk's term of office, *Ibid.*; also *Thomas v. Summey*, 46-554. Action on bond given to treasurer individually is barred in three years: *Jackson v. Martin*, 136-196.

7682. To receive and disburse moneys; to make reports. It is the duty of the treasurer to receive all moneys which shall from time to time be paid into the treasury of this state; to pay all warrants legally drawn on the treasurer by the auditor; and no moneys shall be paid out of the treasury except on the warrant of the auditor; to report to the governor annually and to the general assembly at the beginning of each biennial session thereof the exact balance in the treasury

to the credit of the state, with a summary of the receipts and payments of the treasury during the preceding fiscal year, and so far as practicable an account of the same down to the termination of the current calendar year.

Rev., s. 5370; Code, s. 3356; 1868-9, c. 270, s. 71.

The treasurer is not required to pay any and every warrant the auditor may sign, but only those which are legally drawn, and the fact that the auditor finds that a claim for which he has drawn his warrant is authorized by law is not binding upon or protection to the treasurer: *Bank v. Worth*, 117-146. Both officers are put upon their discretion: *Burton v. Furman*, 115-166; *Boner v. Adams*, 65-639.

The state treasurer is not liable to a mandamus for refusing to pay a warrant improperly drawn, and he is entitled to a mandamus to enforce the drawing of proper warrants upon the proper funds before paying them, as they are his vouchers: *Arendell v. Worth*, 125-111.

As it is the duty of the state treasurer to keep his accounts showing the transactions of each fiscal year, ending December 31st, he has no right to pay out money except upon proper warrants drawn upon proper funds in the treasury: *Arendell v. Worth*, 125-111.

When the state treasurer denies the correctness of a claim audited by the state auditor and alleges fraud in the creation of the indebtedness, or that the services, for which the warrant was issued were not rendered, mandamus will not lie to compel him to pay it, the question raised by such claim being for the legislature, and not the courts, to determine: *Garner v. Worth*, 122-250.

The courts cannot direct the treasurer to pay a claim against the state, however just and unquestioned, when there is no legislative appropriation to pay the same; when there is such an appropriation, the coercive power is applied, not to compel the payment of the state liability, but to compel a public servant to discharge his duty by obedience to a legislative enactment: *Ibid.*

7683. Discretion as to manner of paying annual appropriations. Unless otherwise provided, it shall be discretionary with the treasurer whether he shall pay any annual appropriation in monthly, quarterly, or semiannual installments or in a single payment.

Rev., s. 5372; 1897, c. 368.

7684. Deposits of state funds in banks regulated. Banks having state deposits shall furnish to the auditor of the state, upon his request, a statement of the moneys which have been received and paid by them on account of the treasury. The treasurer shall keep in his office a full account of all moneys deposited in and drawn from all banks in which he may deposit or cause to be deposited any of the public funds, and such account shall be open to the inspection of the auditor. The treasurer shall sign all checks, and no depository bank shall be authorized to pay checks not bearing his official signature. No depository bank shall make any charge for exchange or for the collection of the treasurer's checks or for the transmission of any funds which may come into his hands as state treasurer. The corporation commission and the bank examiners, when so required by the state treasurer, shall keep the state treasurer fully informed at all times as to the condition of all such depository banks, so as to fully protect the state from loss. The state treasurer shall, before making deposits in any bank, require ample security from the bank for such deposit.

The bank or banks in which any money is deposited by the state treasurer, or the insurance commissioner, or by any state department or by any state institution, shall be required to pay interest on monthly balances on said money at the rate of three per centum per annum. The interest collected on the bank balances from time to time shall be paid into the state's general fund; but the treasurer

shall credit to the funds of the agricultural department all money which is received as interest on the funds of the department, and he shall notify the commissioner of agriculture when such amounts are paid.

Rev., s. 5371; 1905, c. 520; 1915, c. 168; 1917, c. 159.

7685. To make short-term notes in emergencies. Subject to the approval of the governor and council of state, the state treasurer is authorized to make short-term notes for temporary emergencies, but such notes must only be made to provide for appropriations already made by the general assembly.

1915, c. 168, s. 3.

7686. To furnish estimates of expenses of state; to draft revenue bill. It shall be the duty of the treasurer to furnish the general assembly, at the commencement of each session, with estimates of the expenses of the state government and the rates of taxation necessary to pay the same for the two years next succeeding the close of the last fiscal year, and with a scheme in the form of a complete revenue bill to sustain such estimates.

Rev., s. 5373; Code, s. 2864; 1856-7, c. 30; 1883, c. 60, s. 3.

For number of copies of reports to be printed, see section 7300.

7687. To construe revenue and machinery acts. It shall be the duty of the state treasurer to decide all questions presented to him which may arise upon the construction and execution of all acts of the general assembly to raise revenue, commonly called revenue acts, and all acts providing for the assessment of property and collection of taxes, commonly called machinery acts, except where the decision of such questions is expressly conferred upon some other official or department. Such decisions of the treasurer shall be *prima facie* correct and a protection to the officers affected thereby.

Rev., s. 5374; 1895, c. 119, s. 17.

7688. May demand and sue for money and property of state. The treasurer is authorized to demand, sue for, collect and receive all money and property of the state not held by some person under authority of law.

Rev., s. 5375; Code, s. 3359; 1866, c. 46.

An action for the collection of license taxes made payable to the state treasurer was properly brought by that officer in his own name, although it might be brought in the name of the state: *Worth v. Wright*, 122-335.

When a state treasurer goes out of office pending a suit by him in his official capacity, the incoming treasurer is entitled to be made a party in his stead: *Laey v. Webb*, 130-545.

7689. Ex officio treasurer of state institutions; duties as such. The treasurer shall be *ex officio* the treasurer of the department of agriculture, of the North Carolina state college of agriculture and engineering, of the North Carolina school for the deaf and dumb at Morganton, of the North Carolina institution for the deaf and dumb and the blind at Raleigh, for the state hospitals (for the insane) at Raleigh, Morganton, and Goldsboro, for the state's prison and soldiers home. He may appoint deputies to act for him at Morganton and Goldsboro, and may pay such deputies reasonable compensation. He shall keep all accounts of the institutions, and shall pay out all moneys, upon the warrant of the respective

chief officers or superintendents, countersigned by two members of the board of directors, managers, or trustees. He shall report to the respective boards at such times as they may call on him, showing the amount received on account of the institution, amount paid out, and amount on hand. He shall perform his duties as treasurer of these several institutions under such regulations as shall be prescribed in each case by their respective boards of managers, trustees, or directors, with the approval of the governor; and shall be responsible on his official bond for the faithful discharge of his duties as treasurer of each of the several institutions. As treasurer of such institutions he shall, annually, after the examination, verification, and cancellation of his vouchers, deposit the same with the respective institutions, and the superintendents thereof shall be responsible for their safe-keeping.

Rev., s. 5376; Code, ss. 2235, 2251, 3723; 1879, c. 240, s. 2; 1881, c. 211, s. 9, c. 128; 1883, c. 156, s. 12, c. 405; 1895, c. 434; 1899, c. 1, s. 11; 1919, c. 314, s. 6.

For vouchers of state's prison, see section 7711. See, also, section 6166.

7690. May authorize chief clerk to act for him; treasurer liable. The treasurer may authorize his chief clerk to perform any duties pertaining to the office, except signing checks; but the treasurer is responsible for the conduct of all his clerks.

Rev., s. 5377; Code, s. 3358; 1868-9, c. 270, s. 76.

A bond by a clerk of the treasury department executed to the state treasurer individually is not an official bond and does not extend beyond the term during which the clerk was appointed: *Jackson v. Martin*, 136-196.

An action against the sureties on the bond of a clerk for defalcation in the office of the state treasurer is barred after three years: *Ibid.*

7691. Liability for false entries in his books. If the treasurer of the state shall wittingly or falsely make, or cause to be made, any false entry or charge in any book kept by him as treasurer, or shall wittingly or falsely form, or procure to be formed, any statement of the treasury, to be by him laid before the governor, the general assembly, or any committee thereof, or to be by him used in any settlement which he is required to make with the auditor, with intent, in any of said instances, to defraud the state or any person, such treasurer shall be guilty of a misdemeanor, and fined, at the discretion of the court, not exceeding three thousand dollars, and imprisoned not exceeding three years.

Rev., s. 3606; Code, s. 1119; R. C., c. 34, s. 68.

7692. Fiscal year; accounts examined by commissioners for legislature. The fiscal year of the state government shall annually close on the thirtieth day of November. The accounts of the treasury, the auditor, and the charitable and penal institutions of the state shall be annually closed on that date. The accounts of the state treasurer, insurance commissioner, and auditor shall be examined during the month of December by commissioners appointed for that purpose at each session of the general assembly, to consist of two senators and three representatives.

Rev., s. 5378; Code, s. 3360; 1868-9, c. 270, s. 77; 1883, c. 60; 1885, c. 334; 1905, c. 430.

7693. Duties of commissioners. The commissioners shall examine the accounts and vouchers relating to all moneys received into and paid out of the treasury during the preceding fiscal year, and shall certify and report to the legislature at its next session the amount of moneys received and the amount of moneys

paid out of the treasury during such year, by virtue of warrants drawn on the treasury by the auditor, the amount of moneys received by the treasurer when he entered his office, and the balance in the treasury at the close of the fiscal year. The attorney-general shall, as soon as may be after the first day of each month, compare the warrants drawn by the auditor on the treasury during the preceding month with the several laws under which the same purport to have been drawn, and shall certify whether the auditor had power to draw such warrants, such certificate to be filed with the warrants of the appropriate month. If any are found which, in the opinion of the attorney-general, he had no power to draw, they shall be specified in such certificate, accompanied by his reasons for the opinion, and a copy of such certificate shall in each instance be furnished forthwith to the chairman of the legislative commission. Whenever the treasurer dies or resigns during his term, or is succeeded at the expiration of his term by another, these commissioners shall examine his accounts. The commissioners shall also examine the warrants drawn on the treasurer by the officials of the various public institutions of the state, whose duty it is to draw such warrants, and the commissioners shall have the same authority over the warrants drawn by the officials of all public institutions as over the warrants drawn by the auditor.

Rev., s. 5379; Code, s. 3361; 1868-9, c. 270, ss. 78, 79; 1903, c. 738; 1919, c. 27.

ART. 7. ATTORNEY-GENERAL

7694. Duties. It shall be the duty of the attorney-general—

1. To defend all actions in the supreme court in which the state shall be interested, or is a party; and also when requested by the governor or either branch of the general assembly to appear for the state in any other court or tribunal in any cause or matter, civil or criminal, in which the state may be a party or interested.

2. At the request of the governor, secretary of state, treasurer, auditor, corporation commissioners, insurance commissioner or superintendent of public instruction, he shall prosecute and defend all suits relating to matters connected with their departments.

3. To represent all state institutions, including the state's prison, whenever requested so to do by the official head of any such institution.

4. To consult with and advise the solicitors, when requested by them, in all matters pertaining to the duties of their office.

5. To give, when required, his opinion upon all questions of law submitted to him by the general assembly, or by either branch thereof, or by the governor, auditor, treasurer, or any other state officer.

6. To pay all moneys received for debts due or penalties to the state immediately after the receipt thereof into the treasury.

7. To compare the warrants drawn by the auditor on the state treasury with the laws under which they purport to be drawn.

Rev., s. 5380; Code, s. 3363; 1868-9, c. 270, s. 82; 1871-2, c. 112, s. 2; 1893, c. 379; 1901, c. 744.

7695. Assistant attorney-general. The attorney-general shall be allowed an assistant, to be appointed by him.

1909, c. 804, s. 1; 1911, c. 94.

ART. 8. SOLICITORS

7696. To prosecute cases removed to federal courts. It shall be the duty of the solicitors of this state, in whose jurisdiction the circuit and district courts of the United States are held, having first obtained the permission of the judges of said courts, to prosecute, or assist in the prosecution of, all criminal cases in said courts where the defendants are charged with violations of the laws of this state, and have moved their cases from the state to the federal courts under the provisions of the various acts of congress on such subjects.

Rev., s. 5381; Code, s. 1239; 1874-5, c. 164, s. 1.

7697. Compensation of solicitors in federal courts. For every such case in which the solicitor shall appear and prosecute, or assist in prosecuting, he shall be allowed twenty dollars; and if he cannot appear himself, by reason of a conflict of the time of holding his courts, or other good cause, he may appoint some one to act in his stead, who shall receive like compensation, and the prosecuting attorney shall be paid said fee by the treasurer of the state, upon the warrant of the auditor.

Rev., s. 5382; Code, s. 1240; 1874-5, c. 164, s. 2.

CHAPTER 130

STATE PRISON

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- 7766. Not to apply to certain crimes.

ART. 1. GOVERNMENT BY BOARD OF DIRECTORS

7698. Incorporation; action against state. The board of directors of the state's prison of North Carolina and their successors in office are and shall continue to be a corporation, with the name of the State Prison, which corporation shall be invested with all the property, real and personal, choses in action, and other rights now owned, held or enjoyed by the North Carolina penitentiary or state's prison, and shall be liable for all of the debts and other liabilities for which the penitentiary or state's prison is now liable. Any suit or action against such corporation shall be construed to be brought against the state, and no person shall have the right to bring or maintain any suit or action against it, nor shall any of the courts of the state have jurisdiction to try, hear, or determine any such suit or action, except as allowed by the constitution in case of claims against the state.

Rev., s. 5383; 1901, c. 472, s. 1; Const., art. 4, s. 9.

State prison cannot be sued, since it is an action against the state: *Moody v. State Prison*, 128-12. For an action by state prison, see *State Prison v. Hoffman*, 159-564.

Case of historical interest: *Day's case*, 124-362.

7699. Directors appointed by governor; term four years. The state's prison of North Carolina shall be governed and controlled by a board of directors which shall consist of a chairman and four other members, to be appointed by the governor, by and with the advice and consent of the senate. The board shall be so appointed during the session of the general assembly of one thousand nine hun-

dred and five, and every four years thereafter, and their term of office shall be four years, beginning on the fifteenth day of March next after their appointment.

Rev., s. 5384; 1901, c. 472, ss. 3, 9.

Cases of historical interest upon the status of the superintendent and the directors as public officers; as to their appointment and as to the power of the legislature to legislate them out: Day's case, 124-362; Welker v. Bledsoe, 68-457.

7700. Governor may remove directors. The governor is empowered to remove the chairman or any member of the board of directors from office for inefficiency or misconduct in office, or if he shall become neglectful of his official duties. The governor shall give such party at least ten days notice of such intended removal, and the grounds therefor, naming a day certain on which such party may be heard. On the day named the governor shall give said party a full hearing, and the governor's decision upon the matter shall be final.

Rev., s. 5385; 1901, c. 472, s. 13.

7701. Directors to fill vacancies. Whenever any vacancy shall occur in such board of directors the same shall be filled by the remaining members of such board of directors.

Rev., s. 5386; 1899, c. 601.

7702. Directors to take oath of office. The board of directors shall meet in the state's prison, near Raleigh, or in the city of Raleigh, on or after the fifteenth day of March next after appointment, and, after taking the proper oath of office before some person authorized to administer oaths, enter upon the discharge of the duties hereby imposed upon them.

Rev., s. 5387; 1901, c. 472, s. 10.

7703. Directors to employ servants and agents. The board of directors are authorized to employ such managers, wardens, physicians, supervisors, overseers, and other servants or agents as they may deem necessary for the management of the affairs of the state's prison and the safe-keeping and employment of the convicts therein confined. They shall fix the compensation of such servants or agents, prescribe their duties by proper rules and regulations, and may discharge them at will.

Rev., s. 5388; 1901, c. 472, s. 3.

7704. Employees' bonds; money paid to state treasurer. The board of directors shall require such of its officers, employees or agents as they shall authorize to receive the moneys and earnings of said institutions to enter into good bonds, to be approved by the board, in such amounts as will fully secure their faithfully accounting for the same. All moneys belonging to said institution which shall come to the hands of any of its officers or employees shall be paid into the hands of the state treasurer within ten days after the same is received, accompanied by a statement showing the source or sources from which the same was derived.

Rev., s. 5389; 1901, c. 472, s. 7.

7705. Acquisition and alienation of property. The state's prison is empowered to acquire and hold, by gift, devise, purchase, or lease, all such property and es-

tate, both real and personal, as may be necessary or convenient in the conduct of its operations and as may be authorized by law; and to dispose of such property and estate by lease, subletting, sale, and conveyance; but no sale or conveyance of its real estate shall be made except by the sanction of a unanimous vote of the board of directors and the approval of the governor.

Rev., s. 5392; 1901, c. 472, ss. 2, 6.

7706. Directors manage property and convicts. The board of directors shall have charge of and, through its agents and employees, hold and manage all the property and effects of the corporation, and conduct the operation of all its affairs. The board of directors may adopt and enforce such rules and regulations for the government of the institution, its agents and employees, and the convicts therein confined, as to them may seem just and proper.

Rev., s. 5390; 1901, c. 472, s. 4.

7707. Custody, employment, hiring out and recapture of convicts. The board of directors shall make provision for receiving and keeping in custody, until discharged according to law, all convicts now confined in such prison, and all such as may be sentenced to imprisonment therein by the courts of this state. It shall also provide for the employment of such convicts, either in the prison or on farms leased or owned by the corporation; and may contract for the hire or employment of any able-bodied convicts, not necessary to be detained in the prison, near Raleigh, upon such terms as may be just and fair to the corporation, but such convicts, when so hired or employed, shall remain under the actual management, control, and care of the board of directors or its employees, agents, and servants; but no female convict shall be worked on public roads or streets. The board of directors may provide for the recapture of convicts that may escape from such prison, in such manner as it may deem best, and may pay such reward and expenses to any person making such recaptures as it may think proper. Any citizen of North Carolina shall have authority without warrant to apprehend any convict who may escape before the expiration of his term of imprisonment, and return him to the state's prison.

Rev., s. 5391; 1895, c. 194, s. 5; 1897, c. 270; 1901, c. 472, ss. 5, 6.

7708. Report to governor. The board of directors shall make to the governor a full report of the financial and physical condition of the said state's prison of North Carolina annually and at such other times as the governor may call for same.

Rev., s. 5393; 1901, c. 472, s. 12.

7709. Compensation of board; not eligible to other office. The members of the board of directors shall receive as compensation for their services four dollars per day each, and five cents per mile each way of travel, while in the discharge of their official duties; but the board may allow its chairman a salary in lieu of per diem and mileage, and confer such authority, and impose such duties upon him in reference to the management of the institution as it may think proper. No member of the board of directors shall be eligible to any other office or employment in connection with the state's prison.

Rev., s. 5394; 1901, c. 472, s. 11.

7710. Directors not to furnish supplies. No director shall furnish any supplies or materials, directly or indirectly, for the support of the convicts, or for the use of the state's prison.

Rev., s. 5395; Code, s. 3429; 1870-1, c. 191, s. 9; 1873-4, c. 158, s. 20; 1879, c. 333, s. 6.

See *Osborn v. Leach*, 135-628.

7711. Duty of state treasurer. The treasurer of the state shall keep the funds of the state's prison separate from other public funds, and shall disburse the same on account of the state's prison upon vouchers consisting of itemized accounts of the claim, and an order of payment signed by such officer or agent as the board of directors shall authorize to sign the same, approved by the chairman of the board. Duplicates of such vouchers shall be kept and filed in the office of the chairman of the board of directors, and the originals thereof shall be kept and filed when paid in the office of the state treasurer.

Rev., s. 5396; 1901, c. 472, s. 8.

7712. Work of convicts on public roads. The board of directors of the state prison are authorized to work the prisoners committed to their charge on the public roads of the state by organizing state camps for housing and feeding the prisoners while at work on such roads, but the construction of such camps must be in accordance with plans approved by the state highway commission and the state board of health, but if worked upon the public roads of any county or subdivision thereof, then such county or subdivision shall pay to the state prison such compensation as may be agreed upon by such county or subdivision thereof and the board of prison directors.

1917, c. 286, s. 11; 1919, c. 80, s. 6.

7713. Supervision of jails and camps by board of health. The state board of health shall have the same supervision of all jails, county camps, or other places of confinement of county or city prisoners in regard to method of construction, sanitary and hygienic care, as they have over the state prison, and the county and city authorities will carry out the directions of the board of health.

1917, c. 286, s. 11½.

7714. Sanitary and hygienic care of prisoners. The sanitary and hygienic care of the prisoners shall be under the direction, supervision, and regulation of the state board of health, and all camps and camp equipment shall conform to the plans and specifications of and be approved by the state board of health; and the board of directors of the state prison shall do such things as may be necessary to carry out the recommendations of the state board of health. The supervision of the state board of health shall apply to the state prison, the state farms, and county or state camps or other places where the prisoners are confined or housed, and such recommendations as shall be made by the state board of health regarding clothes, bedding, tableware, and bathing for the prisoners shall be carried out by the board of directors of the state prison.

1917, c. 286, s. 8; 1919, c. 80, s. 4.

7715. Quarters at state farm. In order to erect suitable quarters for the prisoners kept at the state farms, the board of directors of the state prison is author-

ized and directed to spend a sufficient amount of the funds under the control of the board to pay for the erection of sanitary quarters for the prisoners with individual cells, when cells are deemed necessary, for each prisoner, and the plans and specifications for the erection of such quarters shall be approved by the state board of health.

1917, c. 286, s. 14.

ART. 2. PRISONERS SENT TO STATE PRISON

7716. What prisoners sent to state prison. All persons convicted of crime in any of the courts of this state whose sentence shall be for five years or more shall be sent to the state prison.

1917, c. 286, s. 1.

7717. Convicts sent to place of labor. The board of directors shall, as far as practicable, make arrangements for the conveying of convicts from the places where convicted, direct to the place where they are to be worked, when it would be to the interest of the state so to do.

Rev., s. 5397; Code, s. 3428; 1879, c. 333, s. 5; 1881, c. 289, s. 2.

7718. To be sent within five days. The sheriff, having in charge any prisoner sentenced to the state's prison, shall proceed to send him to the state's prison or place of assignment, within five days after the adjournment of the court at which he was sentenced, if no appeal has been taken.

Rev., s. 5398; Code, s. 3432; 1869-70, c. 180, s. 3.

7719. Copy of affidavit filed with commissioners. The sheriff shall file with the board of commissioners of his county a copy of his affidavit as to necessary guard, together with a copy of his itemized account of expenses, both certified to by the auditor as true copies of those on file in his office.

Rev., s. 5399; Code, s. 3437; 1874-5, c. 107, s. 3.

Failure to file affidavit a misdemeanor, see sections 4384, 4386.

7720. State not liable for expenses before convicts received. The state is not liable for the expense of maintaining convicts until they have been received by the state's prison authorities, nor shall any moneys be paid out of the treasury for support of convicts prior to such reception.

Rev., s. 5400; Code, s. 3438; 1870-1, c. 124, s. 3.

See Taylor v. Adams, 66-338.

ART. 3. PRISON REGULATIONS

7721. Board to make regulations. The board of directors is authorized to adopt such rules and regulations for enforcing discipline as their judgment may indicate, not inconsistent with the constitution and laws of the state. And they shall print and post the same in the cells of the convicts, and the same shall be read to every convict in the state's prison when received.

Rev., s. 5401; Code, s. 3444; 1873-4, c. 158, s. 15.

7722. Infraction of rules recorded. The board of directors shall require to be kept a book in which shall be entered a record of every infraction of the pub-

lished rules of discipline with the name of the prisoner so guilty, and the punishment inflicted therefor, which record shall be submitted to the directors at their monthly meeting.

Rev., s. 5402; Code, s. 3445; 1873-4, c. 158, s. 16; 1899, c. 457.

7723. Prisoners classified and distinguished. The board of directors of the state prison shall direct the classification of all male prisoners committed to their charge into three classes or grades, as follows: In the first class shall be included all those prisoners who have given evidence that they will, or whom it is believed will, observe the rules and regulations and work diligently, and are likely to maintain themselves by honest industry after their discharge; in the second class shall be included those prisoners who have not as yet given evidence that they can be trusted, but are competent to work and are reasonably obedient to the rules and regulations of the institution; and in the third class shall be those prisoners who have demonstrated that they are incorrigible, have no respect for the rules and regulations, and seriously interfere with the discipline and the effectiveness of the labor of the other prisoners. The men of the first class shall be known as honor men, and when grouped together in camps as hereinafter provided for, the camp shall be known as an "honor camp," and they shall wear a distinctive but not very conspicuous uniform, and shall be worked without guards, and when in prison or camps, or in any other place of detention, they shall not be chained or under armed guards at night. The men of the second class shall wear a conspicuous uniform, and shall be worked under armed guards, but shall not wear chains while at work, but may or may not be chained at night, in the discretion of the superintendent. The men of the third class shall be dressed in stripes, shall be worked under armed guards, wear chains during the day, whenever this is considered necessary, and be chained at night when in camp, and shall be worked as far as possible in stockades, inclosing rock quarries, but may be worked on public roads in camps containing only this class of men, at the discretion of the superintendent, or that may hereafter be made by the general assembly. The classification of male prisoners shall apply to female prisoners so far as it relates to commutation of time and pay for their work. Honor men may be worked wherever any work is being carried on by the prison, provided their privileges and immunities as set forth in this section are in no wise abridged.

1917, c. 286, s. 4; 1919, c. 80, s. 2.

7724. Assignment to classes and changes. Persons sentenced to the penitentiary or state prison for the first time shall be placed in the first or second class, but the assignment of a prisoner to any one of the three classes referred to in this article shall not be considered to mean that such prisoner must remain in such class, but a prisoner may be changed from a lower to a higher class or from a higher to a lower class, depending upon his behavior, and it is the purpose and intent of this section to direct the board of directors of the state prison to encourage and assist the men to so improve themselves that they can be transferred from a lower to a higher class or grade.

1917, c. 286, s. 5.

7725. Commutation of time, allowances, and earnings. The men of the first class shall be allowed a commutation of their sentence of one hundred and four days for each year served, and the men of the second class shall be allowed a commutation of their sentence of seventy-eight days for each year they serve, and the men of the third class shall be allowed a commutation of their sentence of fifty-two days for each year they serve. If a man remains in the third class for three continuous years, he shall not be allowed any further commutation of time. In the event any prisoner shall be sentenced for a less period of time than one year, said prisoner shall be entitled to a proportionate commutation of his sentence. The men of the first class shall be allowed fifteen cents per day for each day they work, and those in the second class ten cents per day, and those in the third class five cents per day for each day they work; and the sums shall, in case the prisoner has a family which was dependent upon him, be paid monthly to such family. In case the prisoner has no family, then the money earned by said prisoner shall become accumulative, to be paid over to the prisoner at the time of his discharge, or to be drawn upon by the prisoner for the purchase of such things as he may desire and for other purposes, by and with the approval of the superintendent. All life prisoners shall receive four cents per day for each day they work. This amount to be placed to their credit on the books of the institution; one-half of which may be drawn out semiannually and used as they see fit, and the other half to remain to their credit on the books of the institution and paid to them in case they are pardoned.

Rev., ss. 5402, 5403; Code, s. 3445; 1873-4, c. 158, s. 16; 1899, c. 457; 1901, c. 726; 1911, c. 153; 1917, c. 286, s. 6; 1919, c. 80, s. 3.

A prisoner for life is not entitled to diminution of imprisonment for good behavior: In re McMahon, 125-38—but a prisoner whose term for life has been commuted to a term for years is so entitled, from and after the date of such commutation, but not before, *Ibid*.

7726. Employment at useful labor; hours per day. The board of directors of the state prison shall, through the superintendent, wardens, managers, or officials of the penitentiary, state farms, or reformatories in the state, so far as is practicable, cause all the prisoners in such institutions who are physically capable thereof to be employed at useful labor not to exceed ten hours of each day, other than Sundays and public holidays: Provided, that not more than nine hours work per day shall be permitted when prisoners are hired to private persons, firms, or corporations. This section shall not apply to work on the state farm, nor to existing contracts heretofore made by this state.

1917, c. 286, s. 3.

7727. Prisoners examined for assignment to work. Each prisoner committed to the charge of the board of directors of the state prison shall be carefully examined by a competent physician in order to determine his physical and mental condition, and his assignment to the prison, farm, or camps, and the work that he is required to do, shall be dependent upon the report of said physician as to his physical and mental capacity.

1917, c. 286, s. 22.

7728. Whipping or flogging prisoners. It is unlawful for the board of directors of the state prison to whip or flog, or have whipped or flogged, any prisoner com-

mitted to their charge until twenty-four hours after the report of the offense or disobedience, and only then in the presence of the prison physician or prison chaplain; and no prisoner other than those of the third class as defined in this article shall be whipped or flogged at any time.

1917, c. 286, s. 7.

Convicts not subjected to flogging, except under regulations prescribed by proper authorities: State v. Mincher, 172-895; State v. Nipper, 166-272.

7729. Prisoner's supplies and clothes to be marked. The prisoner's number shall be used for marking all clothes, bedclothing, beds, and other supplies used by prisoners, so that when such clothes, bedclothing, and supplies are washed and cleaned they shall be always returned for the use of the same prisoner.

1917, c. 286, s. 9.

7730. Uniform for prisoners; felon's stripes. It is the duty of the several judicial officers of the state, in assigning any person to work the public roads of any county, to designate in each judgment that such as may be convicted of a felony shall wear felon's stripes, and such as are convicted of a misdemeanor shall not wear felon's stripes. In order to carry into effect the provisions of this section, the state prison board shall prescribe a uniform to be worn by persons convicted of felony, and a uniform to be worn by persons convicted of a misdemeanor which shall be different and easily distinguished from the uniform of the felon; but the state prison board or other governing authority may in their discretion allow prisoners sentenced for misdemeanor only to wear clothes similar to that worn by the ordinary citizen. The board of commissioners of the respective counties in which convicts are worked on the public roads shall provide uniforms of each kind, except in those cases exempted in this section.

1911, c. 64, ss. 1, 2, 3.

The judge should designate in the sentence whether the offense is a felony or misdemeanor or designate the kind of clothes for the convict: State v. Earnhardt, 170-725.

7731. Violation as to work in felon's uniform; officer liable. It shall be unlawful to work persons convicted of a felony in other than the uniform of a felon, or to clothe a person convicted of a misdemeanor in the uniform of a felon. Any superintendent of convicts or other person in authority who shall violate this law shall be guilty of a misdemeanor, and fined or imprisoned, or both, in the discretion of the court; and, moreover, be liable in damage to the party aggrieved, to be recovered in a civil action, which may be brought in either the county from which the party was sentenced or the county in which the wrong was done.

1911, c. 64, ss. 4, 5.

Person not guilty unless the sentence designates the nature of the offense or the clothes to be worn: State v. Earnhardt, 170-725. Section referred to in State v. Nipper, 166-272.

7732. Recreation and instruction of prisoners. The board of directors of the state prison is authorized and directed to arrange certain forms of recreation for the prisoners, and to arrange so that the prisoners during their leisure hours between work and time to retire shall have an opportunity to take part in games, and attend lectures, and take part in other forms of amusement as may be provided by the board. The board is also authorized and directed to make such ar-

rangements as are necessary to enable classes to be organized amongst the prisoners, so that those who desire may receive instruction in various lines of educational pursuits. The board shall utilize, where possible, the services of the prisoners who are sufficiently educated to act as instructors for such classes in education; such services, however, shall be voluntary on the part of the prisoner. The board is further authorized and directed to make such arrangements as will be necessary so that religious services may be held for the prisoners on Sunday and at such other times as they may deem wise. The attendance of the prisoners at such religious services shall be voluntary. The provisions of this section shall apply to the state prison, state farm, and state camps.

1917, c. 286, s. 15.

7733. Use of intoxicants forbidden to employees. No one addicted to the use of intoxicating liquors shall be employed as superintendent, warden, guard, or in any other position connected with the state prison, state farm, state camps, where such position requires the incumbent thereof to have any charge or direction of the prisoners; and any one holding such position, or any one who may be employed in any other capacity in the state prison, state farms, or state camps, who shall come under the influence of intoxicating liquors shall at once cease to be an employee of any of the institutions and shall not be eligible for reinstatement to such position or be employed in any other position in any of the institutions. Any superintendent, warden, guard, supervisor, or other person holding any position in the state prison who curses a prisoner under his charge shall at once cease to be an employee of the institution and shall not be eligible for reinstatement.

1917, c. 286, s. 16; 1919, c. 80, s. 8.

7734. Correspondence of prisoners regulated. The prisoners confined at any state prison, state farm, or state camp who are in the first class or grade authorized by this article shall be allowed general correspondence privileges in so far as such correspondence does not interfere with the work and discipline of the prison, farm, or camp; prisoners who are in the second class or grade shall be allowed similar correspondence privileges, but somewhat more restricted than those in the first class or grade; and prisoners who are in the third class or grade shall only be allowed such correspondence privileges as may be deemed best by the superintendent. Any prisoner shall be permitted to write a letter to the governor of the state at any time he desires; and such letter shall be mailed for him as other letters are mailed.

1917, c. 286, s. 17.

7735. Divine services; Sunday school. The board of directors is authorized to provide for divine service for the convicts each Sunday, if possible, and to secure the visits of some minister at the hospital to administer to the spiritual wants of the sick, and an appropriation of not more than five hundred dollars per annum may be made for these purposes. The sum of fifty dollars per annum is appropriated for the use of the state's prison Sunday school, to be paid to the warden of the state's prison by the state treasurer on the warrant of the auditor.

Rev., s. 5405; Code, s. 3446; 1873-4, c. 158, s. 18; 1883, c. 349.

7736. Religious instruction at Caledonia farm. The board of directors of the state's prison is authorized and directed, in order to provide religious worship for the prisoners confined in the state's prison, known as the Caledonia farm, to employ a resident minister of the gospel and to provide for his residence and support in such manner as the board may determine. It shall be the duty of such resident minister of the gospel to render religious services to the prisoners in accordance with such rules and regulations as the board of directors may prescribe.

1915, c. 125, ss. 1, 2.

7737. Parole system regulated. The board of directors of the state prison is authorized and directed to establish such rules and regulations as may be necessary for developing a system for paroling prisoners, and are authorized and directed to put into practice such rules and regulations as early as it can be consistently done.

1917, c. 286, s. 18.

7738. Indeterminate sentence and discharge. The various judges of the superior courts of North Carolina are authorized and directed, in their discretion, in sentencing prisoners to the state prison to pass upon such prisoner a minimum and maximum sentence, thus making the sentence of the prisoner an indeterminate sentence, and the board of directors of the state prison is authorized and directed to consider at least once every six months the cases of such prisoners as have been committed to the state prison with an indeterminate sentence, as to whether such prisoner is entitled to a discharge, and to take into consideration the prisoner's record since committed to the charge of the board of directors of the state prison: Provided, that the prisoner has served the minimum time to which he was sentenced after allowing credit for good behavior as authorized by law.

1917, c. 286, s. 19.

7739. Application for pardon to include record. Any application for the pardon of a prisoner committed to the discharge of the board of directors of the state prison shall include a record of such prisoner since he was committed to the charge of the board; and in determining whether or not a parole or pardon shall be granted, consideration shall be given to the record of such prisoner; and the record of such prisoner shall be available to those making the application.

1917, c. 286, s. 20.

7740. Prisoners of different races kept separate. White and colored prisoners shall not be confined or shackled together in the same room of any building or tent, either in the state prison or at any state or county convict camp, during the eating or sleeping hours, and at all other times the separation of the two races shall be as complete as practicable. Any officer or employee of either the state or any county in the state having charge of convicts or prisoners who shall violate or permit the violation of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days.

1909, c. 832, ss. 1, 2; 1917, c. 286, s. 24.

7741. Separation of youthful prisoners. Youthful convicts shall be kept separate from old and hardened criminals in sleeping quarters.

1917, c. 286, s. 24.

7742. Punishment for recaptured prisoners. If a prisoner of the first or second class or grade attempts to escape or leaves the state prison, state farm, or state camp without permission, he shall, upon being recaptured, be reduced to the third class or grade and shall permanently lose all his accumulated time and money; and the board of directors of the state prison is authorized and directed to use every means possible to recapture any man escaping or leaving, without permission, any of the state prisons, camps, or farms, regardless of expense.

Rev., s. 5407; Code, s. 3442; 1873-4, c. 158, s. 13; 1917, c. 286, s. 13.

7743. Recapture of escaped felons; reward. It is the duty of the superintendent of the state's prison, when any person escapes from the state's prison who has been confined or placed to work, to immediately notify the governor, and to accompany such notice with a full description of the escaped, together with such information as will be of service in the recapture. The governor is authorized to offer such reward as he may deem advisable and necessary for the recapture and return to the state's prison of any person who may escape or who heretofore has escaped therefrom. Such reward when earned shall be paid by the treasurer of the state upon the warrant of the governor and charged to the penitentiary board, and by said board to be repaid to the state treasurer, and accounted for as a part of the expense of maintaining the state's prisoners.

1917, c. 236.

7744. Copy of this article supplied to prisoners. This article shall be printed in pamphlet form and each prisoner committed to the charge of the board of directors of the state prison shall be supplied with a copy, and its contents shall be explained to him at the time he is brought to the state prison.

1917, c. 286, s. 21.

7745. Overseers and guards may maintain discipline. When a convict or several combined shall offer violence to any officer, overseer or guard, or to any convict, or attempt to do any injury to the prison building or the workshops, or shall attempt to escape, or shall resist or disobey any lawful command, the officer, overseer, or guard shall use any means necessary to defend himself, to enforce the observance of discipline, to secure the person of the offender and to prevent an escape.

Rev., s. 5408; Code, s. 3443; 1873-4, c. 158, s. 14.

For selling liquor and furnishing weapons to convicts, see sections 4508, 4406.

Superintendent of a convict gang, not known to be an officer, has no right to shoot or kill one who, having committed petty larceny and having escaped from prison, is running away to avoid arrest: *State v. Stancill*, 128-606.

7746. Death of convict investigated by directors. It shall be the duty of the board of directors, or some member thereof, upon information of the death of a convict other than by natural causes, to investigate the cause thereof and report

the results of such investigation to the governor, and for this purpose the board of directors, or any member thereof, shall have power to administer oaths, and send for persons and papers.

Rev., s. 5409; 1885, c. 379, s. 2.

7747. Convict furnished transportation out of commutation money. The superintendent of the state's prison shall furnish to every convict, upon the expiration of his term of imprisonment, a certificate of transportation or railroad ticket to the county in which such convict was convicted, or to any other county less distant which such convict may designate, and in which the state's prison may not have convicts employed, and shall pay the cost thereof out of commutation money, if there be any to the credit of such convict, under the provisions of this chapter; and the superintendent shall so countersign such certificates or tickets as to render them nontransferable, and shall compel every convict, as the proper holder thereof, to take passage upon the train or steamboat bound for the destination of such convict.

Rev., s. 5404; 1893, c. 370.

7748. Children born in state's prison. Any child born of a female convict while she is in the custody of the state's prison that shall not be taken in charge upon arrival at an age suitable to be separated from the mother by some of its kindred or other responsible party shall, on the application of the deputy warden to the clerk of the superior court of the county of Wake, be disposed of as the law provides in the case of children whose parents are dead or unable to provide for them.

Rev., s. 5406; Code, s. 3447; 1873-4, c. 158, s. 19.

NOTE.—See art. 2, chapter Child Welfare.

For convicts becoming insane, see section 6238.

ART. 4. BOARD OF PAROLE

7749. Creation of board; duties and powers. There is established a board to be known and designated as an "Advisory Board of Parole," consisting of the attorney-general, chairman, the chairman of the board of directors of the state's prison, and the chairman of the board of state charities, whose duties and powers shall be to act in an advisory capacity to the governor with respect to the parole or conditional pardon of prisoners in the state's prison. The chairman of the board of directors of the state's prison and the chairman of the board of state charities shall be paid for their services as members of such board the same per diem and expenses as are now or may be allowed by law to the chairman of the board of directors of the state's prison, and such payment shall be made by the state treasurer upon voucher from the state auditor issued upon itemized statement approved by the chairman of the board of parole, and sums now due for services for the years one thousand nine hundred and seventeen and one thousand nine hundred and eighteen shall be paid in like manner.

1917, c. 278, s. 1; 1919, c. 191, s. 1.

7750. Record of conduct of prisoners. It is the duty of the superintendent of the state's prison and superintendents of county chain-gangs or road forces,

under rules and regulations to be made and promulgated by the board of parole, to keep a record of the conduct and demeanor of all prisoners held in the state's prison and on county chain-gangs. The advisory board of parole shall formulate rules for application for pardons or paroles for persons serving on county chain-gangs, and when such rules have been approved by the governor they shall be followed and observed by all persons applying for pardons or paroles for prisoners serving upon chain-gangs or in other county or local prisons.

1917, c. 278, s. 2; 1919, c 191, s. 2.

7751. Meetings of board. The advisory board of parole shall meet once each month in the office of the attorney-general at such time as may be agreed upon by the board, and carefully consider the record and all other facts and circumstances which may be produced, to ascertain whether or not any prisoner, the consideration of whose privilege of parole may come before the board, should be recommended to the governor as a proper person to be paroled on a conditional pardon.

1917, c. 278, s. 3.

7752. Cases considered. After any prisoner has been confined in the state's prison as long as the minimum punishment prescribed by statute for the offense of which such prisoner was convicted, provided such minimum punishment is not less than one-fourth the term for which such prisoner was sentenced by the court, at the next monthly meeting of the board of parole the superintendent of the state's prison shall lay before the board the case of such prisoner to determine whether or not, in the opinion of the board, such prisoner should be discharged on parole; but this shall not be understood as depriving the board of parole of the discretion of taking up the case of any prisoner at any time prior to that above stated. The board shall ascertain from the record of such prisoner for the time during which he has been held, or for the last nine months, whether he has been of good demeanor and of meritorious conduct, as shown by obedience to the rules and regulations, and from any other facts and circumstances which may be produced with respect to his past life and conduct, whether such prisoner is a proper subject to recommend to the governor for parole under a conditional pardon.

1917, c. 278, s. 4.

7753. Report to governor; conditional pardon; allowance to prisoners. After the board has ascertained the facts mentioned above, they shall have discretion and power to determine whether or not, in their judgment, such prisoner is a proper subject for parole under a conditional pardon. And if they determine that such parole should be granted, they shall make a brief report in writing to the governor, with their findings of fact as to his record while in the state's prison, as to his previous life and conduct, and as to indications of his purpose to reform; and if the governor approve the granting of a parole in such case, he may grant a conditional pardon under his constitutional power to grant reprieves, commutations, and pardons, and according to the practice and procedure heretofore observed and followed in the granting of conditional pardons by the executive. On the discharge of any prisoner from the state's prison on parole, he shall be provided, at the expense of the state, with a suit of clothes, transporta-

tion to the county in which he has secured employment or in which it is his purpose to reside, and with five dollars in cash, all to be paid by order of the superintendent of the state's prison from the funds belonging to such prison. Such parole shall be for such time as will fill out the term of imprisonment to which the prisoner was sentenced.

1917, c. 278, s. 5.

7754. Prisoners discharged on parole to report monthly. Any person discharged on parole under this article shall, during the parole, report on the second Monday in each month to the clerk of the superior court of the county in which he resides, and show to the satisfaction of such clerk that, by his industry and good conduct, he has satisfied the condition of his parole.

1917, c. 278, s. 6.

7755. Reimprisonment. If the governor shall order the reimprisonment of any person discharged on parole, he may issue his order directly to the sheriff of the county in which such prisoner was due to report to the clerk of the superior court, or to the sheriff of any county in the state, directing the arrest of such person and his return by such officer to the state's prison, the expense of which shall be paid by the state treasurer upon a warrant issued by the state auditor on an order made by the superintendent of the state's prison.

1917, c. 278, s. 7.

7756. No deduction of time. If any such person be reimprisoned by order of the governor for failure to report monthly to the clerk, or for violation of the conditions of his parole, the time such person has been out on parole shall not be deducted from the term of imprisonment to which he was originally sentenced by the court, but the time of his imprisonment shall be understood as continuing from the time he was discharged on his parole.

1917, c. 278, s. 8.

7757. No impairment of governor's powers. This article is not to be taken as in any way attempting to interfere with or regulate the power of the governor to grant reprieves, commutations, and pardons upon his own initiative and executive responsibility in as full and ample a manner as it has heretofore been understood and exercised.

1917, c. 278, s. 9.

ART. 5. FARMING OUT CONVICTS

7758. Counties and towns may employ. It shall be lawful for the board of commissioners of any county, and likewise for the corporate authorities of any city or town, to contract in writing with the board of directors of the state's prison for the employment of such convicts as by existing laws may be hired to railroad companies, upon the highways or streets, for the construction or improvement of the same, of the county, city, or town whose authorities shall so hire such convicts.

Rev., s. 5410; Code, s. 3449; 1881, c. 127, s. 1.

7759. Duty to hire to counties and towns. Upon application to them it shall be the duty of the board of directors of the state's prison to hire to the board of

commissioners of any county, and to the corporate authorities of any city or town, for the purpose specified in the preceding section, such convicts as may lawfully be hired for service outside the state's prison, as shall not at the time of such application be so hired; but the convicts hired for service upon the highways and streets shall be fed, clothed, and quartered while so employed by the board of directors or managers of the state's prison as in case of the hiring of convicts to railroad companies.

Rev., s. 5411; Code, s. 3450; 1881, c. 127, s. 2.

For allowing escape of or maltreating a convict, see section 4405.

7760. Contract for hire; how enforced. The board of commissioners of any county and the corporate authorities of any city or town so hiring such convicts shall pay into the treasury of the state for the labor of any convict so hired a sum of money equal to the average cost in money of feeding, clothing, guarding, and transporting such convicts to and from the place of employment for the town of such hiring, and the money so to be paid at such times as may be agreed upon in the contract of hire; and if any such county, city, or town shall fail to pay the money due for such hiring, the same shall bear interest from the time it shall become due until paid, at the rate of six per cent per annum, if such rate is agreed upon in such written contract, and an action to recover any sum of money so due and imposed may be brought by the attorney-general in the superior court of the county of Wake in the name of the state.

Rev., s. 5412; Code, s. 3451; 1881, c. 127, s. 3.

7761. Counties to appoint superintendents. The board of commissioners of any county and the corporate authorities of any city or town so hiring such convicts shall have power to appoint and remove at will all such necessary agents to superintend the construction or improvement of such highways and streets as they may deem proper, and to pay the costs and expenses incident to such hiring may levy taxes and raise money as in other respects.

Rev., s. 5413; Code, s. 3452; 1881, c. 127, s. 4.

7762. Contracts for labor or products of labor regulated. The board of directors of the state prison shall not, nor shall any other authority whatsoever, make any contract by which the labor or time of any prisoner or convict sentenced to the state prison or reformatory, or the product or profit of his work, shall be contracted, let, farmed out, given or sold to any person, firm, association, or corporation, unless such convict shall be fed and clothed by the prison and shall be quartered, guarded and worked under the sole supervision and control of the prison directors; except that the prisoner or convict may work for and the products of his labor may be disposed of to the state or for or to any public institution owned, managed, or controlled by the state, or for or to any county of the state; but the products of the state farm may be sold in the open market for the purpose of making the state prison self-supporting, as contemplated by the constitution. This section shall not apply to any bona fide contracts already made by the state with any person, firm, or corporation for the use of prisoners or convicts, if such contract is in force.

1917, c. 286, s. 2; 1919, c. 80, s. 1.

7763. Work on railroad and public works. No state convicts shall be worked upon any railroad or public works of the state or county or any subdivision of any county or any works of any character whatsoever if, in the opinion of the governor and board of directors of the state prison, the prison would thereby be made not self-sustaining; and should at any time the surplus convicts that are not already engaged in farm work be engaged in any work for state, county or any subdivision thereof, or any contract work of any nature, and, in the judgment of the governor and the board of directors, the services of such convicts should be needed at the state farm to properly cultivate or to house the crops, the said board of directors are hereby authorized and empowered to discontinue such work and move the prisoners to the state farm at once. This section shall not be construed to interfere with contracts or agreements now in existence.

1919, c. 80, s. 10.

ART. 6. REFORMATORY

7764. Directors may establish reformatory. There may be established in connection with the North Carolina state's prison, under the control and direction of the board of directors of that institution, a reformatory either within the enclosure of the penitentiary or elsewhere as said board shall deem most practicable and economical, in which reformatory convicts under the age of eighteen years sentenced to the penitentiary shall be confined separate and apart from other convicts.

Rev., s. 5414; 1887, c. 356, s. 1; 1913, c. 72.

7765. May exempt from convict garb. It shall be in the discretion of the board to exempt the convicts confined in the reformatory from the requirement of wearing the usual convict garb.

Rev., s. 5415; 1887, c. 356, s. 2.

7766. Not to apply to certain crimes. Nothing in the two preceding sections shall apply to convicts sentenced for the crimes of murder, arson, rape, or burglary.

Rev., s. 5416; 1887, c. 356, s. 3.

CHAPTER 131

TAXATION

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SUBCHAPTER I. LEVY OF TAXES (Revenue Act)

ART. 1. GENERAL PROVISIONS

7767. Object for which tax is levied. The taxes hereinafter designated are payable in the existing national currency, and shall be assessed and collected under the rules and regulations prescribed by law, and applied to the payment of the expenses of the state government, the appropriations to charitable and penal institutions, other specific appropriations made by law, and the interest on the debt of this state.

Rev., s. 5106; 1917, c. 231, s. 1; 1919, c. 90, s. 1.

The general assembly has an unlimited right to tax all persons domiciled within the state, and all property within the state, except so far as this right has been limited by the constitution, either by express words or by necessary implication: *Pullen v. Comrs.*, 66-361.

The revenue act of 1887 was enacted for the purpose of providing revenue for state purposes only: *Parker v. Comrs.*, 104-166.

Poll taxes collected under a special act for highways cannot be diverted to schools and the support of the poor: *Bd. of Education v. Comrs.*, 137-310.

Incidental bills of cost devolved upon the state by failure of actions brought by it (other than those specified in sections 1237 and 1239) are not "expenses of the state government" as contemplated by this section: *Garner v. Worth*, 122-250.

For application of state and county capitation tax, see cases cited under sec. 2, art. 5, of state constitution.

As to payment of taxes in anything but the existing national currency, see under section 7977.

7768. Tax exemptions repealed. Whenever in any law or act of incorporation, granted either under the general law or by special act, there is any limitation or exemption of taxation, the same is hereby repealed, and all the property and effects of all such corporations other than the bonds of the state and of the United States government shall be liable to taxation, except property belonging to the United States and to municipal corporations and property held for the benefit of churches, religious societies, charitable, educational, literary, or benevolent institutions or orders, and also cemeteries: Provided, that no property whatever held or used for investment, speculation, or rent shall be exempt, other than bonds of this state and of the United States government, unless said rent or the interest on or income from such investments shall be used exclusively for religious, charitable, or benevolent purposes, or the interest upon the bonded indebtedness of said religious, charitable, or benevolent institutions.

Rev., s. 5107; 1917, c. 231, s. 5; 1919, c. 90, s. 5.

Property held for rent or profit by religious societies is not exempt from taxation: *Davis v. Salisbury*, 161-56. This section abolishes all exemption from taxation except as therein stated: *Southern Assembly v. Palmer*, 166-75. This section is construed with 7901 in determining exemptions: *Davis v. Salisbury*, 161-56. The grant of an exemption from taxation without some consideration or equivalent therefor received by the state does not constitute a contract, but a privilege merely, which may be recalled at the pleasure of the legislature: *Railroad v. Alsbrook*, 110-137; see *Jackson v. Commission*, 130-385; *Day's case*, 124-389.

ART. 2. SCHEDULE A. GENERAL TAXES

Part 1. Poll and Property Tax

7769. Poll tax. On each taxable poll or male between the ages of twenty-one and fifty years, except the poor and infirm whom the county commissioners may declare and record fit subjects for exemption, there shall be annually levied and collected a tax of one dollar and forty-three cents, the proceeds of such tax to be devoted to purposes of education and the support of the poor, as may be prescribed by law, not inconsistent with the apportionment established by section two of article five of the constitution of this state.

Rev., s. 5109; 1917, c. 231, s. 2; 1919, c. 90, s. 2.

See section 1297 (2). See, also, cases under art. 5, sec. 1, state constitution.

The provision of the constitution is self-executing as to the equation between the property and poll tax; the property tax being fixed, the poll tax is automatically fixed: *Kitchin v. Wood*, 154-565, overruling *Russell v. Ayer*, 120-180. Mandamus will lie to compel county commissioners to levy sufficient poll tax: *R. R. v. Comrs.*, 148-220.

7770. State tax on property. There shall be levied and collected annually an ad valorem tax of eleven and two-thirds cents for state purposes, four cents for pensions and thirty-two cents for public schools, making forty-seven and two-thirds cents on every one hundred dollars value of real and personal property in this state required to be listed in "An act to provide for the assessment of property and collection of taxes," subject to exemption made by law.

Rev., s. 5110; 1917, c. 231, s. 3; 1919, c. 90, s. 3.

For county levy, see section 1297 (2). For general limitations, see Const., art. 5.

Property tax and privilege taxes are distinct; both may be levied by municipal corporations, as for state and county purposes; and special exemption from one of these does not relieve from the other: *Guano Co. v. Tarboro*, 126-68.

The limitation as to one per cent for municipal taxation does not apply when the legislature has authorized a tax for a special purpose: *Bain v. Goldsboro*, 164-102; *Underwood v. Ashboro*, 152-641.

Provision in state constitution requiring a proportional poll and property tax does not apply to municipal corporations: *Wingate v. Parker*, 136-369—nor to other taxes except those levied for the ordinary state and county purposes, *Moose v. Comrs.*, 172-419.

Requirement in the constitution, art. 5, sec. 7, that every act levying taxes shall state the objects to which they shall be appropriated, has no application to taxes levied by the county authorities for county purposes: *Parker v. Comrs.*, 104-166.

Acts 1903, ch. 251, through the boards of equalization, provides a plain and adequate remedy at law to test the validity and regularity of a tax assessment, and it cannot be tested by injunction: *Wilson v. Green*, 135-343.

7771. Corporation taxes payable to state treasurer. 1. *Amount to be paid.* Every corporation, joint-stock association, limited partnership or company whatsoever, from which a report is required by law to be made to the corporation commission, shall be subject to and pay to the state treasurer annually the state school and pension tax as prescribed in the preceding section upon each one hundred dollars of the actual value of its whole capital stock of all kinds, including common, special, and preferred, as ascertained in the manner prescribed by law; and also the franchise tax imposed by section 7861.

2. *Notice of amount and penalty; payment to be made.* It shall be the duty of the state auditor to mail to every such corporation a statement of the amount

of such taxes, which statement shall contain a copy of so much of this section as relates to penalty as notice of penalty for failure to pay said taxes; and it shall be the duty of the treasurer or other officer having charge of any such corporation, joint-stock association or limited partnership upon which a tax is imposed to transmit the amount of the tax to the state treasurer within thirty days from the date of such notice. If such tax is not paid by the first day of November it shall be the duty of the auditor to send, not later than November fifteenth, final notice to such delinquent corporation that penalty will be imposed if payment is not made as required by this section.

3. *Enforcement of payment.* If the said tax is not paid by the first day of December next following, the state treasurer shall certify to the state auditor a complete list of all such taxes due and unpaid. The state auditor shall add ten per centum to such taxes, and return to the state treasurer, charging the state treasurer with the amount so added, and the state auditor shall thereupon certify the same with such percentage added to the sheriff or tax collector of the county in which such delinquent corporation has its principal office, and charge such sheriff or tax collector with the amounts so certified. Such certificate by the state auditor to the sheriff or tax collector in any county shall have the same force and effect as a judgment and execution against the real and personal property of such corporation as is given by this chapter for the collection of other taxes, and it shall be the duty of the sheriff or tax collector to proceed to collect same, by levy, advertisement and sale, in the same manner as provided by law for the collection of other taxes. The sheriff or tax collector shall be allowed the same fees for collecting, or for levy, advertisement and sale as provided by law for collection of other taxes, the same to be allowed in settlement with the state treasurer.

4. *Application of section.* The provisions of this section shall apply to any taxes payable directly to the state treasurer that are due and unpaid on the tenth day of March, 1919, and such taxes may be certified for collection at any time during the year 1919: Provided, that for the purposes of this subchapter interests in limited partnerships or joint-stock associations shall be deemed to be capital stock and taxed accordingly: Provided, also, that corporations, limited partnerships, and joint-stock associations liable to tax on capital stock under this section shall not be required to make any report or pay any further tax on mortgages, bonds, other securities and credits owned by them in their own rights; but corporations, limited partnerships, and joint-stock associations holding such securities as trustees, executors, administrators, guardians, or in any other manner shall return and pay the tax imposed by this subchapter upon the securities so held by them as in case of individuals. Individual stockholders in any corporation, joint-stock association, limited partnership, or company paying a tax on its capital stock shall not be required to pay any tax on said stock or list the same, nor shall corporations legally holding capital stock in other corporations upon which the tax has been paid by the corporation issuing the same be required to pay any tax on said stock or list the same. Nor shall any individual stockholder of any foreign corporation be required to list or pay taxes on any share of its capital stock, if two-thirds in value of its entire property is situated

and taxed in the state of North Carolina, or if such corporation has tangible assets within this state assessed for taxation at a value exceeding the par value of the total stock owned by citizens of this state, and the said corporation pays franchise tax on its entire issued and outstanding capital stock at the same rate as paid by domestic corporations.

Rev., s. 5108; 1917, c. 231, s. 4; 1919, c. 90, s. 4.

See section 7941 et seq.

Corporations are not allowed to deduct from the value of their capital stock the stock which they hold in other corporations: *State v. Morrison & Sons Co.*, 155-53. But when the corporation has paid its tax on capital stock, the county commissioners cannot assess against it the value of solvent credits, since these were considered in valuation of capital stock: *Land Co. v. Smith*, 151-70.

Part 2. Inheritance Tax

7772. Rate of inheritance tax. All real and personal property of whatever kind and nature which shall pass by will or by the intestate laws of this state from any person who may die seized or possessed of the same while a resident of this state, whether the person or persons dying seized thereof be domiciled within or out of the state (or if the decedent was not a resident of this state at the time of his death, such property or any part thereof within this state), or any interest therein or income therefrom which shall be transferred by deed, grant, sale, or gift, made in contemplation of the death of the grantor, bargainor, donor, or assignor, or intended to take effect in possession or enjoyment after such death, to any person or persons or to bodies corporate or politic, in trust or otherwise, or by reason whereof any person or body corporate or politic shall become beneficially entitled in possession or expectancy to any property or the income thereof, shall be and hereby is made subject to a tax for the benefit of the state as follows, that is to say:

1. Where the person or persons entitled to any beneficial interest in such property shall be the lineal issue, or lineal ancestor, adopted child, or husband or wife, of the person who died possessed of such property aforesaid, at the following rates of tax for each one hundred dollars of the clear market value of such interest in such property:

	<i>Rate of Tax</i>
Above exemption up to \$25,000.....	1 per cent
Excess over \$25,000 and up to \$100,000.....	2 per cent
Excess over \$100,000 and up to \$250,000.....	3 per cent
Excess over \$250,000 and up to \$500,000.....	4 per cent
Excess over \$500,000.....	5 per cent

The persons mentioned in this class shall be entitled to the following exemptions: Widows, ten thousand dollars; each child under twenty-one years of age, five thousand dollars; all other beneficiaries mentioned in this subchapter, two thousand dollars each: Provided, grandchildren shall be allowed the single exemption of the child they represent, and in case of specific legacy or bequest the proportion of exemption to which they would be entitled if they took as representatives of the parent.

2. Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister or descendant of the brother or sister of the person who died possessed as aforesaid, at the following rates of tax for each one hundred dollars of the clear market value of such interest:

	<i>Rate of Tax</i>
Twenty-five thousand dollars or less.....	3 per cent
Excess over \$25,000 and up to \$100,000.....	4 per cent
Excess over \$100,000 and up to \$250,000.....	5 per cent
Excess over \$250,000 and up to \$500,000.....	6 per cent
Excess over \$500,000	7 per cent

3. Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of relationship or collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the person who died possessed as aforesaid, or shall be a body politic or corporate, at the following rates of tax for each one hundred dollars of the clear market value of such interest:

	<i>Rate of Tax</i>
Twenty-five thousand dollars or less.....	5 per cent
Excess over \$25,000 and up to \$100,000.....	6 per cent
Excess over \$100,000 and up to \$250,000.....	7 per cent
Excess over \$250,000 and up to \$500,000.....	8 per cent
Excess over \$500,000	9 per cent

Provided, that no tax shall be imposed or collected under this section on legacies or property passing by will or otherwise, or by the laws of this state to religious, educational, or charitable corporations (not conducted for profit) in this state, and this provision shall apply to all such legacies or property passing by will or by the laws of this state since March twelve, one thousand nine hundred and thirteen; nor shall any tax be imposed in any case where the whole amount of such legacy or devise does not exceed two hundred dollars in value.

Rev., s. 5111; 1917, c. 231, s. 6; 1919, c. 90, s. 6.

History of inheritance tax discussed: *State v. Scales*, 172-915; *In re Morris Estate*, 138-259.

A succession tax is a tax on the right of succession to property, and not on the property itself, and is not void because exemptions are granted or discriminations made between relatives and between these and strangers, nor for lack of uniformity: *In re Morris Estate*, 138-259. The right to impose an inheritance or succession tax does not depend upon the kind of property transferred, and the revenue act of 1903 imposing such tax on personal property only is constitutional: *Ibid.* An inheritance tax on realty is valid: *Norris v. Durfey*, 168-321. The fact that the testator, in his will, directed his executors not to make any returns of his property cannot nullify the statutory provisions as to the inheritance tax: *In re Morris Estate*, 138-259.

The method provided in the revenue act of 1903, ch. 247, sections 6-21, for the ascertainment, computation and collection of an inheritance or succession tax is constitutional: *In re Morris Estate*, 138-259. Manner of estimating inheritance tax under act of 1911, c. 46, explained: *State v. Bridgers*, 161-247; *In re Inheritance Tax*, 172-170 (annuity for wife and children). Under act of 1913, c. 201, a widow's dower over \$10,000 is subject to inheritance tax: *Corporation Com. v. Dunn*, 174-679. A nephew living with an uncle as a member of the family and treated as a child pays the lower rate of tax: *In re Inheritance Tax*, 168-352. Construction as to exemptions, under act of 1915, c. 285: *State v. Scales*, 172-915.

7773. Deductions allowed. In calculating the value of the distributive share the following deductions, and no others, shall be allowed: Debts of the dece-

dent, taxes, including Federal estate taxes; drainage and street assessments, funeral and burial expenses, all amounts actually expended for monuments not exceeding the sum of five hundred dollars, commissions of executors and administrators and cost of administration, including reasonable attorney's fees.

1919, c. 90, s. 6.

7774. Estates settled without administrator. Whenever an estate subject to tax under this act shall be settled or divided among the heirs at law, legatees or devisees, without the qualification and appointment of a personal representative, the clerk of the superior court of the county wherein the estate is situated shall certify the same to the corporation commission, and shall also require such heirs at law, legatees or devisees to report to him under oath the value of such real and personal estate, and shall report the valuation to the corporation commission. The clerk is authorized and required to cite all interested parties to appear before him and make the report herein required and pay to him the amount of the inheritance tax due upon said property.

Rev., s. 5111; 1917, c. 231, s. 6; 1919, c. 90, s. 6.

7775. Gifts in anticipation of death. All advancements and gifts equal to or in excess of five per cent of the decedent's estate at the time such advancements or gifts were made, and made within five years of the decedent's death, shall be prima facie made in contemplation of death. Any transfers or conveyances made upon consideration that was grossly inadequate within the same period shall be an inheritance to the extent that the consideration was inadequate at the time it was made.

1919, c. 90, s. 6.

7776. Stock in incorporated companies. 1. *In foreign corporation.* The words "such property or any part thereof or interest therein within this state" shall include in its meaning bonds and shares of stock in any incorporated company, incorporated in any other state or country, when such incorporated company is the owner of property in this state, and if fifty per cent or more of its property is located in this state, and when bonds or shares of stock in any such company not incorporated in this state, and owning property in this state, are transferred by inheritance, the valuation upon which the tax shall be computed shall be the proportion of the total value of such bonds or shares which the property owned by such company in this state bears to the total property owned by such company, and the exemptions allowed shall be the proportion of exemptions allowed by this act, as related to the total value of the property of the decedent.

If the incorporated company not incorporated in this state and owning property in this state be a railroad company, the proportion upon which the tax shall be paid shall be the proportion which the miles of road of such company in this state bears to the total miles of road of such company.

2. *Transfer of shares in corporation.* Any incorporated company not incorporated in this state and owning property in this state which shall transfer on its books the bonds or shares of stock of any decedent holder of shares of stock in such company exceeding in par value five hundred dollars, before the inheritance tax, if any, has been paid, shall become liable for the payment of said tax,

and any property held by such company in this state shall be subject to execution to satisfy same. A receipt or waiver signed by the state tax commission of North Carolina shall be full protection for any such company in the transfer of any such stock or bonds.

3. *Duties of tax commission.* The state tax commission shall prepare and furnish, upon application, blank forms covering such information as may be necessary to determine the amount of inheritance tax due the state of North Carolina on the transfer of any such bonds or stock; it shall determine the value of such bonds or stock, and shall have full authority to do all things necessary to make full and final settlement of all such inheritance taxes due or to become due, and shall make prompt return to the state treasurer of all such taxes collected.

The state tax commission shall have authority, under penalties provided in section 7861, to require that any reports necessary to a proper enforcement of this act be made by any such incorporated company owning property in this state.

Rev., s. 5111; 1917, c. 231, s. 6; 1919, c. 90, s. 6.

7777. **Statements filed by executors and administrators.** 1. *What statement shall contain.* Every administrator shall prepare a statement in duplicate, showing as far as can be ascertained the names of all the heirs at law and their relationship to decedent, and every executor shall prepare a like statement showing the relationship to the decedent of all legatees, distributees and devisees named in the will, and the age at the time of death of the decedent of all legatees, distributees, and devisees to whom property is bequeathed or devised for life or for a term of years, and the names of those, if any, who have died before the decedent. If any of the heirs at law, distributees and devisees are minor children of the decedent such statement shall also show the age of each of such minor children. The statement shall also contain a complete inventory of all the real property of the decedent located in this state, and of all personal property of the estate, together with an appraisal under oath of the value of each class of property embraced in the inventory, and the value of the whole, together with any deductions permitted by this statute, so far as they may be ascertained at the time of filing such statement.

2. *Time and manner of filing; effect of failure.* The statement herein provided for shall be filed within three months after the qualification of the executor or the administrator, upon blank forms to be prepared by the state tax commission and furnished to the clerk of the superior court in each county. If any administrator or executor refuses to comply with any of the requirements of this section, he shall be liable to a penalty of not more than one thousand dollars, which shall be recovered by the state tax commission for the use of the state. Every executor or administrator may make a tentative settlement of the inheritance tax with the clerk of the superior court based upon the sworn inventory provided in this section. One copy of the duplicate report herein provided to be made shall be mailed by the clerk of the superior court to the state tax commission and one copy shall be bound or copied in a book to be kept for that

purpose, by the clerk of the superior court: Provided, that this section shall not apply to estates of less than two thousand dollars in value when the beneficiaries are husband or wife or children or grandchildren of the decedent.

1919, c. 90, s. 14.

7778. Clerk to report cases where there is no administration. Whenever the clerk of the superior court shall ascertain that any real estate has passed by will or by intestate laws of this state and there shall be no executor or administrator of the deceased person, the clerk shall ascertain the names of the persons taking said property and their several interests therein, and report the same to the state tax commission and shall cause the same to be appraised, and the clerk shall enter the same in the appraisal book herein provided for, and shall collect the tax due from the person taking such property and shall enforce payment as herein provided for as fully as if there were an administrator or executor.

1919, c. 90, s. 14(a).

7779. Supervision by state tax commission. 1. *Appointment of agents and their duties.* The state tax commission shall have complete supervision of the enforcement of all provisions of the inheritance tax law. It shall regularly employ such attorneys, examiners or special agents as may be necessary for the reasonable carrying out of its full intent and purpose. Such attorneys, examiners or special agents shall, as often as required to do so, visit the several counties of the state to see that all statements required by this act are filed with the clerks of the superior court by administrators and executors, or by beneficiaries under wills where no executor is appointed; to examine into all statements filed by such administrators and executors; to require such administrators and executors to furnish any additional information that may be deemed necessary to determine the amount of tax that should be paid by such estate. If not satisfied, after investigation, with valuations returned by the administrator or executor, the attorney, examiner or appraiser shall make an additional appraisal, after proper examination and inquiry, or may, in special cases, designate an appraiser, who in such case shall be paid five dollars per day and expenses for his services.

2. *Appeal from appraisal.* The administrator or executor, if not satisfied with such additional appraisal, may appeal within thirty days to the state tax commission, and if the amount in controversy does not exceed the sum of one hundred dollars, and demand shall be made by the executor or administrator for a hearing, said state tax commission shall direct one of its members to proceed to the county in which said estate is situated, and after due notice said member of the state tax commission shall hear said appeal and render his decision on the same, which decision shall be deemed to be in all respects a decision of the state tax commission. From this decision or any other decision made after an appeal to the state tax commission the administrator or executor shall have the right to appeal to the superior court of the county in which said estate is situated for the purpose of having said issue tried by a jury, said appeal to be made in the same way and manner as is now provided by law for appeals from the decisions

of the corporation commission. When the final appraisal is finally fixed as herein provided, and if any additional tax is found to be due, the same shall be collectible within thirty days from such finding.

3. *Fund for expenses; special agent.* A sum not exceeding three per cent of the inheritance taxes collected and paid into the state treasury in the previous year is hereby appropriated for the use of the state tax commission in carrying out the provisions of this act. Upon request the state tax commission may designate an attorney, examiner or special agent to make an appraisal before statement is filed by an administrator or executor, and to advise and assist in the making out of such statement.

1919, c. 90, s. 15.

7780. Clerk to record reports; payment of tax enforced. It shall be the duty of the clerk of the court to enter in a book to be provided at the expense of the state, to be kept for that purpose, and which shall be a public record, the returns made by all administrators, executors and appraisers under this act, opening an account in favor of the state against the decedent's estate; and the clerk may give certificates of payment of such tax from such record; and it shall be the duty of the clerk of the court to transmit to the state tax commission on the first Monday of each month a statement of all returns made by administrators, executors and appraisers during the preceding month, giving the name of the estate and a clear valuation thereof, subject to the foregoing tax, and the amount of the tax, which statement shall be entered by the state tax commission in a book to be kept by it for that purpose, and the full amounts collected and so returned shall be immediately turned over by the state tax commission to the state treasurer with report of same to the state auditor. Whenever any such tax shall have remained due and unpaid for one year it shall be lawful for the clerk of the superior court to apply to the court by bill or petition to enforce the payment of the same; whereupon said court, having caused due notice to be given to the owner or owners of the estate charged with the tax and to such other person or persons as may be interested, shall proceed according to equity to make such decrees or orders for the payment of the said tax out of such estates as shall be just and proper.

Rev., s. 5120; 1917, c. 231, s. 17; 1919, c. 90, s. 17.

7781. Persons liable required to file account and pay tax. If the clerk of the court shall discover that such tax has not been paid according to law, the court shall be authorized to cite the executors or administrators of the decedent, whose estate is subject to the tax, to file an account, or to issue a citation to the executors, administrators, legatees or heirs, citing them to appear on a day certain and show cause why such tax should not be paid, and when personal service cannot be had, notice shall be given for four weeks, once a week, in at least one newspaper published in said county; and if such tax shall be found to be due and unpaid, the delinquent shall pay the tax, interest, and costs. And it shall be the duty of the solicitor of the district in which the delinquent resides to sue for the recovery and amount of such tax, and for such services he shall be allowed a fee, to be fixed by the judge, not to exceed five per cent of the amount

recovered. The state tax commission is authorized and empowered, in settlement of accounts of any clerk, to allow him costs of advertising and other reasonable fees and expenses incurred in the collection of such tax.

Rev., s. 5122; 1917, c. 231, s. 18; 1919, c. 90, s. 18.

7782. Executor shall deduct the tax. The executor or administrator or other trustee paying any legacy or share in the distribution of any estate subject to such tax shall deduct therefrom at the rate prescribed, or if the legacy or share in the estate be not money, he shall demand payment of a sum to be computed at the same rates upon the appraised value thereof for the use of the state; and no executor or administrator shall be compelled to pay or deliver any specific legacy, or article to be distributed, subject to tax, except on the payment into his hands of a sum computed on its value as aforesaid; and in case of neglect or refusal on the part of the legatee to pay the same, such specific legacy or article, or so much thereof as shall be necessary, shall be sold by such executor or administrator at public sale, after notice to such legatee, and the balance that may be left in the hands of the executor or administrator shall be distributed as is or may be directed by law; and every sum of money retained by any executor or administrator, or paid into his hands on account of any legacy or distributive share, for the use of the state, shall be paid by him to the proper officer without delay.

Rev., s. 5116; 1917, c. 231, s. 9; 1919, c. 90, s. 9.

7783. Legacy for life, tax apportioned. If the legacy or devise subject to such tax be given to any person for life or for a term of years, or for any other limited period upon a condition or contingency, the tax thereon shall be retained upon the whole amount, and application shall be made to the court having jurisdiction of the accounts of executors and administrators to make apportionment, if the case requires it, of the sum to be paid by such life tenants and remaindermen, and for such further order relative thereto as equity shall require.

Rev., s. 5113; 1917, c. 231, s. 10; 1919, c. 90, s. 10.

7784. Legacy charged upon realty. Whenever such legacy shall be charged upon or payable out of real estate, the heir or devisee of such real estate, before paying the same to such legatee, shall deduct therefrom at the rates aforesaid, and pay the amount so deducted to the executor or administrator, and the same shall remain a charge upon such real estate until paid; and in default thereof the same shall be enforced by the decree of the court in the same manner as the payment of such legacy may be enforced: Provided, that all taxes imposed by this article shall be a lien upon the real and personal property of the estate on which the tax is imposed, or upon the proceeds arising from the sale of such property, from the time the tax is due and payable, and shall continue a lien until the tax is paid and receipted for by the proper officer of the state.

Rev., s. 5115; 1917, c. 231, s. 11; 1919, c. 90, s. 11.

7785. Payment of tax upon transfer of stock by foreign executor. Whenever any foreign executor or administrator or trustee shall assign or transfer any stocks or bonds in this state standing in the name of the decedent or in trust for a decedent, which shall be liable for the said tax, such tax shall be paid on the transfer thereof; otherwise the corporation permitting such transfer shall become liable to pay such tax.

The state tax commission is given authority to make appraisal of such stocks or bonds, and settlement of taxes due under this section. Exemptions shall be prorated as provided in subsection one of section 7772, and receipt or waiver issued by the state tax commission shall be complete protection to any such corporation for the transfer of such stock or bonds.

Rev., s. 5117; 1917, c. 231, s. 13; 1919, c. 90, s. 13.

7786. Executor, etc., liable for nonpayment. Any administrator, executor, or trustee who shall fail to pay the lawful inheritance taxes due upon any estate in his hands or under his control within two years from the time of his qualification shall be liable for the amount of such taxes, and the same may be recovered in an action against such administrator, executor, or trustee and the sureties on his official bond. Any clerk of the court who shall allow any administrator, executor, or trustee to make a final settlement of his estate without collecting the inheritance taxes due by law shall be liable upon his official bond for the amount of such taxes.

1917, c. 231, s. 20; 1919, c. 90, s. 20.

7787. When taxes due; discount for prompt payment; penalty for delay. All taxes imposed by this act shall be due and payable at the death of the testator, intestate, grantor, donor or vendor, unless in this act otherwise provided, and if the same are paid within six months from the death of the testator, intestate, grantor, donor or vendor, a discount of three per centum shall be allowed and deducted from such taxes; if not paid within one year from the date of the death of the testator, intestate, grantor, donor, or vendor, such tax shall bear interest at the rate of six per centum per annum, to be computed from the expiration of one year from the date of the death of such testator, intestate, grantor, donor, or vendor, for a period of one year, and ten per centum per annum thereafter until the same is paid.

The penalty of ten per cent herein imposed may be remitted to simple interest by the state tax commission in case of unavoidable delay in settlement of estate or of pending litigation.

Rev., s. 5112; 1917, c. 231, s. 18; 1919, c. 90, s. 8.

7788. When tax discharged. All heirs, legatees, devisees, administrators, executors and trustees shall only be discharged from liability for the amount of such taxes, the settlement of which they may be charged with, by paying the same for the use aforesaid, as provided in this article.

Rev., s. 5118; 1917, c. 231, s. 7; 1919, c. 90, s. 7.

7789. When tax refunded. Whenever debts shall be proven against the estate of a decedent, after the distribution of legacies from which the inheritance tax has been deducted in compliance with this chapter, and the legatee is required to refund any portion of the legacy, a proportion of the said tax shall be repaid to him by the executor or administrator if the said tax has not been paid into the state treasury, or shall be refunded by the state treasurer if it has been so paid in, upon certificate of the state tax commission.

Rev., s. 5121; 1917, c. 231, s. 14; 1919, c. 90, s. 16.

7790. Clerk of superior court agent for collection of tax. The clerks of the court of the several counties of this state shall be the agents of the state for the collection of the inheritance tax, and for services rendered in collecting and paying over the same they shall be allowed to retain for their own use, in addition to other fees or salary received by them, fees according to the following schedule for each estate settled. Any provision in any local act in conflict with this provision is hereby repealed.

On the first \$100 of tax collected.....	5 per cent
Above \$100 and up to \$1,000.....	4 per cent
Above \$1,000 and up to \$10,000.....	3 per cent
Above \$10,000 and up to \$50,000.....	2 per cent
Above \$50,000 and up to \$100,000.....	1½ per cent
Above \$100,000 and up to \$300,000.....	1 per cent
Above \$300,000	½ of 1 per cent

Provided, that when the total fees collected by the clerk under this schedule shall in any one year exceed one thousand dollars the board of county commissioners may require that an amount not exceeding two-thirds of the excess above one thousand dollars shall be paid into the general county fund where the estate is settled.

Rev., s. 5123; 1917, c. 231, s. 19; 1919, c. 90, s. 19.

7791. Liability of clerk for failure to collect. If the state tax commission shall ascertain that any clerk has failed to collect or pay over any inheritance tax which he should have collected, the state tax commission shall demand payment of the same by said clerk at once, and if such clerk shall fail to account for or pay over such tax within sixty days from such demand, or to show that he has not been negligent and has made diligent effort to collect the same, he shall be liable on his official bond for double the said tax, to be recovered by the state tax commission in an action in the superior court of Wake County: Provided, that this section shall not apply to clerk where the estates have been settled and final account of the estate approved prior to the tenth day of March, 1919.

Rev., ss. 5124, 5125; 1917, c. 231, s. 21; 1919, c. 90, s. 21.

NOTE.—No county or municipal corporation may levy inheritance tax. Section 7795.

7792. Sheriff to collect after two years. If taxes imposed on inheritances are not paid within two years after the death of the decedent, it shall be the duty of the clerk to certify to the sheriff the amount of tax due upon such inheritance, and the sheriff shall collect the same as other taxes, with an addition of two and one-half per cent as sheriff's fees for collecting same; and the sheriff is hereby given the same rights of levy and sale upon any property upon which the said tax is payable as is given for the collection of other taxes. The sheriff shall make return to the clerk of the superior court of all such taxes within thirty days after collection, to be accounted for by the clerk in monthly settlement with the state auditor and treasurer as provided by law: Provided, that time for payment and collection of such tax may be extended by the state tax commission for good reason shown.

1917, c. 231, s. 8(a); 1919, c. 90, s. 8(a).

Part 3. Income Tax

7793. Taxpayer to list income. The taxpayer shall list his income for the year ending January first from any and all sources from salaries, fees, trades and professions in excess of one thousand dollars for unmarried persons and fifteen hundred dollars for married persons and widows and widowers having minor child or children.

Rev., s. 5128; 1917, c. 231, s. 22; 1919, c. 90, s. 22.

7794. What tax list must contain. The blanks for listing taxes shall contain the following questions:

(1) "Was your gross income from salaries, fees, trades, professions and property not taxed, any and all of them, for the year ending January first in excess of one thousand dollars if unmarried, or fifteen hundred dollars if married, or widow or widower with minor child or children?"

(2) "If so, what was the amount of said excess?"

Rev., s. 5129; 1917, c. 231, s. 23; 1919, c. 90, s. 23.

7795. Rate of income tax. On all gross incomes, as provided in the preceding section hereof, a tax to be collected as other taxes for that year shall be levied as follows: On the excess over the amount legally exempted up to twenty-five hundred dollars, one per cent; on the excess above twenty-five hundred dollars and up to five thousand dollars, one and one-half per cent; on the excess above five thousand dollars and up to ten thousand dollars, two per cent; on the excess over ten thousand dollars, two and one-half per cent. The above tax shall not be levied upon the income derived from property already taxed nor upon income less than one thousand dollars if unmarried, or fifteen hundred dollars if married, or widow or widower, with minor child or children. The incomes subject to the above tax are those derived from property not taxed, from salaries, fees and commissions, public or private; from annuities; from trades or professions, and from any other sources the incomes from which are not specifically exempted from taxation by law. No city, town, township, or county shall levy any inheritance tax or income tax.

Rev., s. 5127; 1917, c. 231, ss. 24, 25; 1919, c. 90, ss. 24, 25.

NOTE.—For reports on salaries and fees, see section 7942.

The state cannot tax the salary of a federal officer: *Purnell v. Page*, 133-125.

ART. 3. PRIVILEGE TAXES*Part 1. Schedule B. License Taxes*

7796. Taxes under this schedule defined. Taxes in this schedule shall be imposed as license tax for the privilege of carrying on the business or doing the act named; and nothing herein contained shall be construed to relieve any person or corporation from the payment of tax as required in the preceding schedule. The license issued under this schedule shall be for twelve months, and shall expire on the thirty-first day of May of each year. Such license thus obtained shall be a personal privilege and shall not be transferable nor any abatement in the tax allowed; and unless otherwise provided in the section levying the tax, the tax levied for

the use and benefit of the state shall be collected in each county in which the business is conducted, except as otherwise herein provided. Whenever such tax is graduated with reference to the population of the city or town in which the privilege is exercised, the minimum tax provided in such section shall be applied to the same business or privilege when conducted or exercised outside of a municipality.

Rev., s. 5132; 1917, c. 231, s. 26; 1919, c. 90, s. 26.

See section 7855 and annotations thereunder.

A tax on property and a tax on privileges are distinct taxes, and an exemption by special act from one does not relieve from the other: *Guano Co. v. Tarboro*, 126-68. Where several occupations are conducted in town by same individual, a privilege tax on one does not prevent a similar tax on another: *Ibid*.

Tax imposed directly by the legislature upon a corporation, or its gross receipts, or the cash value of the shares of its capital stock, or upon each mile of its road at a certain sum per mile, and not assessed by assessors, is a franchise or privilege tax: *Worth v. R. R.*, 89-301.

The right of a state to tax trades, professions and avocations within the borders of the state is unquestionable, though the goods dealt in be manufactured in another state: *State v. Gorham*, 115-721.

The franchise tax upon every corporation doing business in the state is a tax upon the privilege of being a corporation, and its payment does not relieve it, or its lessee, from the payment of a tax imposed upon the privilege of carrying on the particular kind of business for which the corporation was chartered: *Cobb v. Comrs.*, 122-307.

The tax on the gross receipts of an insurance company is a privilege tax, and a county may levy an ad valorem tax on the property of such company: *Ins. Co. v. Stedman*, 130-221.

Under article five, section three, of the constitution, the same rule of uniformity applies to the taxing of "trades, professions, franchises and incomes" as to the other species of property therein named; and there must be also uniformity in the mode of assessment: *Worth v. R. R.*, 89-301.

Uniformity, in its legal and proper sense, is inseparably incident to the power of taxation, whether applied to taxes on property or to those imposed on trades, professions, etc.: *State v. Moore*, 113-697.

A tax upon an occupation must reach all who follow it, all of a class, either of persons or things: *Worth v. R. R.*, 89-301.

7797. Theaters. On each room or hall used as a theater or opera house, where public exhibitions or performances are given for profit, the license tax shall be as follows: In cities or towns of one thousand inhabitants or less, ten dollars per annum; over one thousand to three thousand, twenty-five dollars per annum; three thousand to five thousand, fifty dollars per annum; over five thousand to ten thousand, seventy-five dollars per annum; over ten thousand to fifteen thousand, one hundred dollars; over fifteen thousand, one hundred and fifty dollars. The license under this section shall be issued by the sheriff and shall be conspicuously posted in the entrance of the vestibule of the room or hall, and said room or hall shall not be liable for any other license tax by the county, but the said tax shall be divided and one-half paid to the state and one-half to the county. Companies or individuals when performing or exhibiting in rooms or halls licensed under this section shall not be required to pay any other county or state license tax: Provided, that no city shall levy a tax greater than the amount levied by the state.

Rev., s. 5133; 1917, c. 231, s. 27; 1919, c. 90, s. 27.

A musical conservatory owning a hall in which it gives musical entertainments for the special benefit of its pupils and teachers, charging for admission thereto, is not liable for the opera house tax: *Markham v. Conservatory*, 130-276.

7798. Traveling theatrical companies. Every traveling theatrical company giving exhibitions or performances in any hall, tent, or other place not licensed as provided in the preceding section, whether on account of municipal ownership or for any other reason, shall pay five dollars on each day's or part of a day's exhibitions or performances; two or more exhibitions at different times on the same day and place shall only be liable for one day's tax, and the owner of the hall, tent, or other place shall be responsible for the tax; but artists exhibiting paintings or statuary, work of their own hands, shall only pay two dollars: Provided, all such places of amusement as do not charge more than a total of twenty cents for admission at the door and the right to a reserved seat, and shall perform in any given place as much as one week at a time shall only be required to pay five dollars for the first day and one dollar per day for each succeeding day. Counties, cities, or towns shall not collect a greater amount than that of the state tax, and the proprietor of any such show shall apply in advance to the sheriff of any county in which a performance is to be given for a license. Failing to do this, the show shall be subject to the actual expenses incurred by the sheriff or tax collector in enforcing payment of the license levied under this section.

Rev., s. 5134; 1917, c. 231, s. 28; 1919, c. 90, s. 28.

See *Markham v. Conservatory*, 130-276.

7799. Moving picture or vaudeville shows. On each room, hall, or tent used as a moving picture or vaudeville show, the tax shall be as follows: In towns of less than one thousand five hundred inhabitants, ten dollars per annum; less than five thousand inhabitants and more than one thousand five hundred, thirty dollars per annum; less than ten thousand inhabitants and more than five thousand, sixty dollars per annum; in towns or cities with more than ten thousand inhabitants and less than fifteen thousand, one hundred dollars per annum; more than fifteen thousand inhabitants, one hundred and fifty dollars per annum. Counties shall not levy any tax under this section, and cities and towns shall not levy a greater amount of license tax than that of the state.

1917, c. 231, s. 28(a); 1919, c. 90, s. 28(a).

The population is to be determined by the federal census: *State v. Prevo*, 178-740.

7800. Circuses, menageries, etc. 1. *Rate.* On every exhibition of a circus, menagerie, wild west show, dog and pony show, and every other show not licensed in the preceding sections, the tax shall be as follows, for each day or part of a day: Shows transported by wagons, \$10. Shows requiring transportation of

15-car trains and less.....	\$ 25.00
16 to 25-car trains.....	75.00
25 to 40-car trains.....	100.00
40 to 50-car trains.....	150.00
Over 50-car trains.....	200.00

Provided, that no county, city, or town shall levy more than one-half of the amount levied by the state. On each side-show with shows requiring less than thirty cars for transportation, ten dollars; on all other shows, twenty-five dollars. On every exhibition of a show enumerated in this section that charges more than fifty cents general admission, the tax shall be three hundred dollars. Every

county shall have the power to fix the county tax on all shows enumerated in this section at such amount as the county commissioners shall deem proper, not to exceed one-half the amount levied by the state. The county commissioners of any county in North Carolina in which there is a regularly organized agricultural fair may refuse to allow any circus, menagerie, wild west show, dog and pony show, or carnival show, to exhibit within five miles of such fair either one week prior to or from its beginning to its ending: Provided, that notice is given to the sheriff by the commissioners of the county not to issue license to such entertainments sixty days prior to the date of such exhibition.

2. *Statement filed.* The person, firm, or corporation by whom any show taxed under this section is owned or controlled shall file with the state treasurer, not less than five days before the same shall enter the state for the purpose of exhibiting therein, a statement, duly subscribed, setting out in detail such information as the state treasurer may deem necessary to cover the places within the state where exhibitions are to be given, the character of the exhibition, etc. Upon receipt of such statement the state treasurer shall fix and determine the amount of the license tax with which such show is chargeable, and shall indorse his findings upon such report, and transmit a copy thereof to the sheriff or tax collector of each and every county in which such show is to exhibit, with full and particular instructions as to the license tax to be collected therefrom, which instructions may be modified from time to time when deemed necessary for the purpose of the proper enforcement of this section. It shall be the duty of the sheriff of each and every county in which such circuses or shows are advertised or exhibited to promptly communicate such information to the state treasurer; and in case the statement respecting any such shows as herein enumerated shall not be filed in time for certified copies thereof, with proper instructions, to be transmitted to the sheriffs of the several counties, it shall be the duty of the state treasurer to cause his duly authorized representative to attend at one or more points in the state where such circus or show is advertised or expected to exhibit, for the purpose of securing such statement, or fixing and determining the amount of the license tax with which such show is chargeable and of giving proper instructions for the collection of such tax.

3. *Penalty.* Any circus or show which shall exhibit in the state before said statement shall have been filed, or which shall, after the filing of such statement, give any exhibition taxable at a higher rate than the exhibition authorized by the state treasurer upon the basis of the statement filed, shall be chargeable with a license tax of fifty per cent greater than that hereinbefore prescribed, and the sheriff of any county in which such circus or show shall exhibit shall in all cases collect such excess tax and shall be charged with and make settlement therefor as for other taxes: Provided, that the state treasurer in his discretion may remit such excess tax, wholly or in part.

4. *Carnival companies; week-stand engagements.* On all carnival companies, traveling circuses and shows of like character, moving picture and vaudeville shows, museums and menageries, merry-go-rounds and ferris wheels, and other like amusement enterprises, conducted for profit under the same general management and filling week-stand engagements, or in giving week-stand exhibitions, whether under canvas or not, the following taxes shall be paid for each week or

part of week, to wit: On all such carnival companies and traveling circuses and shows of a like character, consisting of not more than six distinct attractions, conducted for profit, one hundred dollars for the state and a like amount for the county; and when consisting of more than six distinct attractions, conducted for profit, one hundred and fifty dollars for the state and a like amount for the county: Provided, that towns and cities of less than ten thousand inhabitants may levy a like tax, in an amount not greater than that levied for both state and county purposes; and cities of more than ten thousand inhabitants may levy a like tax, in an amount not greater than twice that levied for both state and county purposes: Provided further, that no such carnival company or combination shall be relieved from the payment of the tax hereinbefore provided for, or of any part thereof, whether state, county, or municipal, by reason of the donation or appropriation of the whole or any part of the proceeds arising from the carrying on of the same to any religious, charitable, educational or other cause whatsoever: Provided, that this section does not repeal any local act prohibiting the showing of carnivals or the authority of the board of county commissioners to prohibit such shows.

Rev., s. 5135; 1917, c. 231, s. 29; 1919, c. 90, s. 29.

7801. Certain shows may be prohibited. The board of county commissioners may direct the sheriff of the county to refuse to issue any license to any of the amusement enterprises described in subsection four of the preceding section whenever in the opinion of the board the public welfare will be endangered by the licensing of such companies. But this section shall apply only to the counties of Anson, Bladen, Burke, Cabarrus, Carteret, Catawba, Duplin, Forsyth, Greene, Haywood, Iredell, Lee, Madison, Mitchell, Nash, Orange, Pamlico, Pasquotank, Polk, Randolph, Robeson, Scotland, Tyrrell, Washington, Wilson, and Yadkin.

1919, c. 164.

7802. Permanent amusement parks. All permanent "Amusement Parks," when admission is regularly charged to either the park or any show, attraction or feature contained therein, shall pay a tax of two hundred and fifty dollars: Provided, no city, town or county shall levy any additional tax on such park or show, attractions or features contained therein: Provided further, any show, attraction or feature contained in such park shall be exempt from the provisions of this act: Provided further, this section shall not apply to baseball parks or parks owned or controlled by municipalities.

1919, c. 90, s. 29a.

7803. Certain entertainments exempt. All exhibitions or entertainments given for the sole benefit of religious, charitable, or educational objects shall be exempt from taxation: Provided, that when operas, chautauquas, star courses or theatrical troupes are employed, such as usually appear in licensed halls or theaters, then the tax shall be the same as that imposed on traveling theatrical companies performing in unlicensed halls: Provided further, that no tax shall be charged for any exhibitions or entertainments for the sole benefit of religious, charitable, or educational objects and given in halls used at the time exclusively for such objects, nor for exhibitions given at city parks and other resorts, when no charges for admission are made: Provided, no county, city, or town shall levy any addi-

tional tax on chautauquas, and no tax shall be collected for the use of state on any bona fide chautauqua acting under contract with local committee of guarantors.

Rev., s. 5136; 1917, c. 231, s. 30; 1919, c. 90, s. 30.

See *Markham v. Conservatory*, 130-276.

7804. Attorneys, physicians, dentists, etc. Every practicing lawyer, practicing physician, dentist, oculist, photographer, optician, osteopath, architect, optometrist, veterinary surgeon, accountant, fire insurance adjuster, electrical engineer, chiropractor, civil engineer, or any person practicing any professed art of healing for fee or reward, shall pay an annual license tax of five dollars: Provided, that no city, town, or county shall levy an additional license tax under this section. Such license when paid in one county shall be good in every other county in the state.

Rev., s. 5137; 1917, c. 231, s. 31; 1919, c. 90, s. 31.

7805. Real estate and rent-collecting agents. Every individual or firm or his or their agents acting as agent in buying and selling real estate of any and every description, or collecting rent for compensation, shall pay an annual license tax, in towns of less than five thousand, ten dollars; in towns of more than five thousand and less than ten thousand, fifteen dollars; in towns of more than ten and less than fifteen thousand, twenty dollars; in towns of more than fifteen thousand, twenty-five dollars. Cities and towns may, in their discretion, levy a tax under this section not in excess of the state tax.

Rev., s. 5138; 1917, c. 231, s. 32; 1919, c. 90, s. 32.

7806. Real estate auction sales. Any person, firm, or corporation that conducts auction sales of real estate for profit shall pay a tax of ten dollars per day on which auction sales of real estate are held, and the county may levy an equal amount: Provided, this tax shall not apply to sales under mortgage, deed of trust, or order of court.

1917, c. 231, s. 32(a); 1919, c. 90, s. 32(a).

7807. Coal dealers. Every individual, corporation, firm, or association of persons engaged in and conducting the business of selling coal, at wholesale, shall pay an annual license tax of twenty-five dollars; at retail, an annual license tax in each town in which coal is sold or delivered in towns of less than two thousand five hundred inhabitants, five dollars; in towns of more than two thousand five hundred and less than ten thousand inhabitants, fifteen dollars; in towns of more than ten thousand, fifty dollars: Provided, that where the retailer does not deliver the coal to his customers by means of wagons or freight cars or other vehicles, that in such case the annual license tax in any city shall be five dollars.

Rev., s. 5139; 1917, c. 231, s. 33; 1919, c. 90, s. 33.

7808. Collecting agencies. Every collecting agency collecting accounts, bills, notes or other money, from one person in favor of another, shall pay an annual license tax of twenty dollars.

Rev., s. 5140; 1917, c. 231, s. 34; 1919, c. 90, s. 34.

7809. Dealers in second-hand clothing. Every dealer in second-hand clothing shall pay an annual license tax of forty dollars.

Rev., s. 5140; 1917, c. 231, s. 34; 1919, c. 90, s. 34(a).

7810. Undertakers, embalmers, and retail dealers in coffins. All undertakers and embalmers and retail dealers in coffins shall pay an annual license tax in towns and cities of over fifteen thousand inhabitants, fifty dollars; in towns and cities of more than ten thousand and less than fifteen thousand, thirty dollars; in towns and cities of more than five thousand and less than ten thousand, twenty dollars; in cities and towns or villages of less than five thousand inhabitants, ten dollars; in villages of less than five hundred inhabitants the annual license tax shall not be more than five dollars: Provided, that this section shall not apply to a cabinet maker (who is not an undertaker) who makes coffins to order.

Rev., s. 5140; 1917, c. 231, s. 34; 1919, c. 90, s. 34(b).

7811. Dealers in horses and mules. All persons, firms, or corporations who buy and sell horses and mules as a business or for profit shall pay an annual license tax of twenty-five dollars. If horses or mules are shipped by carload, this tax shall give authority to buy and sell one carload of horses and mules, and for each additional carload of horses or mules bought, an additional tax of five dollars per car shall be paid semiannually to the sheriff. Every person, firm or corporation engaged in this business shall keep an accurate record of invoices and freight bills covering such shipments until such invoices and freight bills have been checked up by the sheriff or traveling auditor of the state tax commission. The license for conducting said business shall be issued by the sheriff of any county in which horses and mules are bought or sold, and shall be good in any county in the state: Provided, a separate license shall be required in every county where a separate place of business is maintained. No county, city, or town shall levy or collect any tax under this section. Any person required to take out a license under this section who shall sell or attempt to sell any horses or mules without having obtained such license shall be deemed guilty of a misdemeanor, and upon conviction shall be fined fifty dollars or imprisoned not exceeding thirty days, the fine to be paid into the state treasury for the general school fund. No person shall feign or pretend to be partners when they are in fact not bona fide such, in order to evade the tax to which they would otherwise be liable under the provisions of this section, and a violation of this provision shall make the offender guilty of a misdemeanor. All persons, firms, or corporations operating under a livery stable license who buy horses and mules for sale shall be classed as horse dealers and, in addition to their livery stable tax, shall be required to pay such tax as he or they shall be liable for under this section: Provided, that this section shall not apply to persons dealing solely in horses or mules of their own raising: Provided, any person, firm, or corporation who pays the tax laid in this section shall not be liable for the twenty-five dollars license tax mentioned in section 7817.

Rev., s. 5141; 1917, c. 231, s. 35; 1919, c. 90, s. 35.

7812. Phrenologists. Every person engaged in the practice of phrenology shall pay an annual license tax of twenty-five dollars for each county in which such person does business.

1917, c. 231, s. 36; 1919, c. 90, s. 36.

7813. Bicycle dealers. Every individual, corporation, association, or firm, or his or their agents; engaged in the business of buying and selling bicycles or bicycle and motorcycle supplies and fixtures shall pay an annual license tax as follows: In cities or towns of twelve thousand inhabitants or over, ten dollars; in cities and towns of less than twelve thousand inhabitants, five dollars: Provided, that nothing in this section shall apply to any individual, corporation, association, or firm conducting the exclusive business of repairing bicycles.

Rev., s. 5143; 1917, c. 231, s. 37; 1919, c. 90, s. 37.

7814. Commission merchants, brokers, etc. Every commission merchant, broker, or dealer buying or selling goods and merchandise on commission shall pay ten dollars per annum; and every person, individual, firm, or corporation selling or offering for sale stock in foreign corporations, an annual tax of one hundred dollars.

Rev., s. 5144; 1917, c. 231, s. 38; 1919, c. 90, s. 38.

“Broker” defined in *Schaul v. Charlotte*, 118-733.

7815. Ship brokers; marine railways. Every person engaged in the business of managing the affairs occurring between the owners of vessels and the shippers or consignees of the freight which they carry, usually known as “ship brokers,” shall pay an annual license tax of forty dollars; every person owning or operating marine railways with a hauling capacity of less than eighty tons, fifteen dollars; every marine railway with a hauling capacity of more than eighty tons and less than one hundred and fifty tons, fifty dollars; every marine railway with a hauling capacity of more than one hundred and fifty tons, seventy-five dollars.

Rev., s. 5145; 1917, c. 231, s. 39; 1919, c. 90, s. 39.

“Broker” defined in *Schaul v. Charlotte*, 118-733.

7816. Pawnbrokers. No person shall without a license authorized by law engage in the business of lending money or other things for profit for or on account of specific articles of personal property, other than farm products, deposited with the lender in pledge. Any person who shall in any manner lend or advance money as aforesaid on the pledge and possession of such personal property shall be held to be a pawnbroker. After such person shall have forfeited his right to redeem the property the pawnbroker may cause said property to be sold at public auction. The expenses attending the sale shall be paid out of the proceeds of sale, and if any surplus arise from the sale, after satisfying the money advanced, with the interest and costs which have accrued, such surplus shall be paid over to the person depositing the property as aforesaid. Any person acting as pawn-

broker without a license shall pay a fine of not less than fifty nor more than five hundred dollars. A pawnbroker shall pay for the privilege of transacting business an annual license tax of two hundred dollars.

Rev., s. 5146; 1917, c. 231, s. 40; 1919, c. 90, s. 40.

There is great difference between the terms "broker" and "pawnbroker." A broker is an agent, middleman or negotiator who works for a commission. A pawnbroker is not an agent, but one who lends money upon personalty pledged as security: *Schaul v. Charlotte*, 118-733.

7817. Livery stables. Every person, firm, or corporation who keeps horses or mules to hire or let, with or without vehicle, shall pay one dollar for every horse or mule kept for that purpose. Such person shall, on the thirty-first day of May of each year, furnish to the sheriff a sworn statement of the number of horses or mules sold or so kept at any time during the preceding twelve months, the taxes to be collected by the sheriff or tax collector. Every person, firm, or corporation operating under a livery stable license who sells more than five horses or mules within six months shall be classed as horse dealer and shall pay an additional tax of twenty-five dollars, and shall post license from a sheriff in some conspicuous place in his office or place of business.

Rev., s. 5147; 1917, c. 231, s. 41; 1919, c. 90, s. 41.

7818. Sewing machines. 1. *Rate.* Every person, firm, or corporation selling sewing machines in this state shall pay an annual license tax to the treasurer of one hundred dollars (\$100), and the treasurer shall issue a license to said person, firm, or corporation to sell sewing machines until July first next thereafter. In addition to the license tax above required, every person, firm, or corporation selling sewing machines shall pay a tax of eighty (80) cents on every hundred dollars of the total amount received during each year for or on account of machines sold, leased, or exchanged in this state during said year and prior thereto, after the tenth day of March, 1919, which tax shall be paid to the treasurer before securing an annual license on July first in each year. Any person, firm, or corporation selling sewing machines without having paid the license tax required by this section shall pay a penalty of two hundred and fifty dollars, to be recovered by the treasurer in a civil action in the superior court of Wake county, and shall also pay double the license and sales taxes required by this section for the year then current.

2. *Statement filed.* When a person, firm, or corporation makes application for the license required by this section, the treasurer shall require a sworn statement showing the amount of sales of sewing machines made by the applicant in this state for the year preceding the first day of July then last past. The treasurer may require an itemized statement and may require the production of books and papers, and may make such investigation as he may deem proper; and after making such investigation the treasurer shall find what was the amount received from sales for such year, and shall collect tax upon the amount at the rate aforesaid. If the applicant be a natural person he shall sign the application and statement of sales and swear to the correctness of the latter. If the application be made by a firm, one of the partners shall verify the application. If it be made by a corporation, the verification of the statement shall be made by one of the

managing officers. Any person, firm, or corporation making a false statement for the purpose of defrauding the state out of taxes due under this section shall be guilty of a misdemeanor and shall be liable to a penalty of one thousand dollars, to be recovered by the treasurer in a civil action to be instituted in the superior court of Wake county.

3. *Duplicate license.* Any person, firm, or corporation taking out license under this section may employ an unlimited number of agents and secure a duplicate copy of such license for each agent by paying a fee of one dollar to the treasurer, and the county in which the applicant does business may charge a tax of five dollars; each duplicate license so issued to contain the name of agent to whom it is issued and the same to be nontransferable. An agent holding such duplicate copy of license is licensed thereby to sell only the sewing machines sold by the holder of the original license.

4. *No other tax required.* No person, firm, or corporation licensed under this section shall be required to pay any other license or privilege tax; and no county shall have the right to impose any license or privilege tax. No city or town shall levy a license or privilege tax exceeding twenty dollars on any dealer having an office or selling from any receiving point. No person, firm, or corporation paying a tax upon gross sales under this section shall be required to pay a tax on such sales under or by virtue of any other section of this subchapter. Any merchant or dealer who shall buy sewing machines from a manufacturer or dealer paying the license and gross sales tax hereunder may sell such sewing machines without paying any gross sales tax thereon, and without paying any license tax except the cost of securing a duplicate license in the name of the person, firm, or corporation taking out the license and paying the gross sales tax; and such duplicate license shall protect any person, firm, or corporation, selling sewing machines upon which the license and gross sales taxes shall have been paid, from any additional tax. Such duplicate license issued to such dealer may be issued in the name of the person, firm, or corporation taking out the original license and paying the gross sales tax, but may be marked for the benefit of the person, firm, or corporation desiring to again sell such sewing machines in this state.

Rev., s. 5148; 1917, c. 231, s. 42; 1919, c. 90, s. 42.

One who engages, on his own account, in the business of buying and selling sewing machines in this state is required to pay the tax and obtain the license prescribed in this section: *State v. Wessell*, 109-735.

Where sewing machines are shipped into the state to be delivered to consignee upon payment of purchase price, seller is liable for license tax, and sheriff can levy upon machine before such payment and delivery: *Sims v. R. R.*, 130-556; but this ruling was reversed in *R. R. v. Sims*, 191 U. S., 441.

7819. Feather renovators. Every individual or firm or association of persons, or his or their agents, engaged in the business of renovating feathers, shall pay a license tax as follows: Ten dollars for each county in which such business may be solicited or conducted.

Rev., s. 5149; 1917, c. 231, s. 43; 1919, c. 90, s. 43.

7820. Peddlers. 1. *Rate.* Any person who shall carry from place to place any goods, wares, or merchandise and offer to sell or barter the same or actually sells or barter the same, shall be deemed to be a peddler and shall pay a license tax

as follows: Each peddler on foot, twenty-five dollars for each county; each peddler with horse, ox, or mule, with or without vehicle, or with a vehicle propelled by any other power, seventy-five dollars for each county; each and every peddler of medicinal and proprietary preparations, flavoring extracts, spices, and toilet articles, whether on foot or with horse, mule, or ox, with or without vehicle, or with vehicle propelled by any other power, but having no free or paid attractions and no attractions upon the streets nor in a tent nor any other place for the purpose of receiving trade, one hundred dollars for each county; each and every peddler of medicines or drugs, whether on foot or with horse, mule, or ox, with or without a vehicle, or with a vehicle propelled by any other power, and having any free or paid attractions upon the street or in a tent or in any other place for the purpose of receiving trade, one hundred and fifty dollars for each county. Every itinerant salesman who shall expose for sale, either on the street or in a house rented temporarily for that purpose, goods, wares, or merchandise, shall pay a tax of one hundred dollars in each county in which he shall carry on such business, whether as principal or as agent for any other person.

2. *Application.* Every person mentioned in this section shall apply in advance for a license to the board of county commissioners of the county in which he purposes to peddle or sell, and the board of county commissioners may in their discretion issue the license upon the payment of the tax to the sheriff, which shall expire at the end of twelve months from its date. This section shall not apply to those who sell or offer for sale books, periodicals, printed music, ice, fuel, fish, vegetables, fruits, or any articles of the farm or dairy or articles of their own individual manufacture, except medicines or drugs. The board of county commissioners shall have power at their discretion to exempt from tax under this section any poor and infirm person, and shall exempt confederate soldiers, and such license shall be good in any county in the state. And no city, town, or county shall levy any tax on confederate soldiers acting as peddlers.

3. *Persons included.* Any person using a wagon, cart, buggy, or motor-driven vehicle, or traveling on foot for the purpose of exhibiting or delivering any wares or merchandise, shall be considered a peddler: Provided, that this section shall not apply to persons or their agents engaged in exchanging woolen goods for wool: Provided further, that this section shall not apply to drummers selling by wholesale and bona fide residents who are blind: Provided further, that each person other than a bona fide citizen of the county in which he shall undertake to do business, who shall expose for sale goods, wares, or merchandise in any building, room, or stand rented for such purpose, shall be liable to the tax herein imposed upon itinerant dealers: Provided further, that such tax shall be refunded to any such dealer who shall continue to do business in such county for a period of one year: Provided further, that nothing in this section shall prevent counties having special acts applying thereto from collecting a higher tax in accordance with the provisions of said special act.

Rev., s. 5150; 1917, c. 231, s. 44; 1919, c. 90, s. 44.

[Some of the cases annotated below are based upon statutes not entirely like this section.]

A "peddler" is one who sells and delivers the identical goods he carries about with him: *State v. Lee*, 113-681. A picture dealer, who contracts to sell pictures, has them sent out to him, delivers to the purchaser, and receives the price agreed upon beforehand, is no peddler: *Greensboro v. Williams*, 124-167. One who sells goods by sample, which goods are shipped

to purchaser in care of one who sold them and delivered by him, is a peddler: *State v. Franks*, 127-510. A publishing company selling and delivering books through agents in sets, the title of books remaining in seller until paid for, is liable to license tax on peddlers: *Collier v. Burgin*, 130-632. (This decision was under sec. 54, chap. 9, of acts of 1901.)

The taxation of persons who sell books through agents and ship them to their agents to be delivered to buyers is not in violation of art. 1, sec. 8, of the constitution of the United States as to interstate commerce: *Collier v. Burgin*, 130-632.

Person who travels from house to house on foot selling goods by sample, and afterwards delivers them on foot, is not a peddler: *State v. Frank*, 130-724. Person selling watermelons in wholesale lots in the city of Salisbury, to be shipped from a nearby town, and only delivering to those from whom he had taken orders, is not an itinerant merchant or peddler: *State v. Ninestein*, 132-1039. The permission given to sell articles of one's own manufacture without taking out peddler's license is personal to the manufacturer and does not extend to an agent employed by the manufacturer to sell his goods: *State v. Rhyne*, 119-905—and does not apply for the benefit of one who merely mixes and boils certain drugs and medicines together, and sells them under a deceptive name, as "Herbs of Life," *State v. Morrell*, 100-506.

The exception as to "articles of the farm and dairy" includes beef butchered by a farmer from cattle raised on his farm, but not when he buys and butchers cattle for sale and peddles the meat: *State v. Smith*, 173-772.

General power of legislature to make classification of persons liable to license tax: *Smith v. Wilkins*, 164-136. Whether or not the exemption as to confederate soldiers is valid, it would not invalidate the section: *Ibid.* See section 5168.

7821. Mercantile agencies. Every mercantile agency or association doing or soliciting business in this state which has for its object the rating of the commercial status of persons, firms or corporations, shall pay the sum of two hundred and fifty dollars, to be paid by the principal office in the state to the state treasurer; and no city, town, or county shall levy any additional license tax. Any person representing any mercantile agency which has failed to pay a license tax as above provided shall be guilty of a misdemeanor.

Rev., s. 5152; 1917, c. 231, s. 45; 1919, c. 90, s. 45.

7822. Gypsies or fortune-tellers. Every company of gypsies or strolling bands of persons living in wagons or tents or otherwise who trade horses or mules, or receive rewards for pretending to tell fortunes, shall pay two hundred dollars in each county in which they offer to trade horses or mules or practice any of their crafts, recoverable out of any property belonging to any of the company; but nothing herein contained shall be so construed as to exempt them from indictment or penalties imposed by law; and any other person or persons receiving reward for pretending to tell fortunes or practicing the art of palmistry, and clairvoyants, shall pay twenty-five dollars in each county in which they offer to practice their profession or craft.

Rev., s. 5153; 1917, c. 231, s. 46; 1919, c. 90, s. 46.

7823. Lightning-rod agents. 1. *License required.* Every person, firm, or corporation selling and erecting lightning rods in the state shall pay an annual license tax to the insurance commissioner of fifty dollars for each year, ending July first next, at which time all such licenses shall expire, and the insurance commissioner, on written application in such form as he shall prescribe, shall issue a license to said person, firm, or corporation to sell licensed brands of lightning rods until July first next thereafter. In addition to the license tax above required, every person, firm, or corporation selling lightning rods shall pay a tax of eighty cents on every hundred dollars received from the sale

of lightning rods, which tax shall be paid to the insurance commissioner semi-annually on or before January thirtieth and July thirtieth of each year. No license shall issue until all license fees and taxes are paid.

2. *Statement filed.* Sworn returns for taxes shall be made to the insurance commissioner in such form as he shall prescribe, and he may require the production of books and papers and make such investigation as he may deem proper. Any person, firm, or corporation making a false statement in any application or report required by this section shall be guilty of a misdemeanor, and shall also be liable to a penalty of one hundred dollars, to be recovered by the insurance commissioner in a civil action to be instituted in the superior court of Wake county.

3. *County license tax.* Each county in which any applicant sells or erects or proposes to sell or erect rods shall be entitled to a tax of five dollars, to be collected by the insurance commissioner and by him shall be paid into the treasury of the county.

4. *Duplicate license.* Any person, firm, or corporation taking out license under this section may employ agents and secure a duplicate copy of said license for each agent by paying a fee of one dollar to the insurance commissioner, each duplicate license so issued to contain the name of the agent to whom it is issued, and the same to be nontransferable. An agent holding such duplicate copy of license is licensed thereby to sell or erect only the classes or licensed brands of rods sold by the holder of the original license.

5. *Other license taxes.* No person, firm, or corporation licensed under this section shall be required to pay any other license or privilege tax. No county, city, or town shall levy a license or privilege tax exceeding twenty dollars on any dealer having a general office for selling from any receiving point. No person, firm, or corporation paying a tax upon gross sales under this section shall be required to pay a tax on said sales under or by virtue of any other sections of this act. Such amount shall be payable to the insurance commissioner for the use of the state and each county upon a license being issued by him, which license he is authorized to issue to sell such brand or make of lightning rods as are standard and efficient when properly erected.

6. *Approved brands sold.* Only approved and licensed brands of lightning rods shall be allowed to be sold in this state and only by licensed agents. Upon the filing with the insurance commissioner of samples of brands of rods by the manufacturer or maker of lightning rods and the payment of fifty dollars for each brand, the commissioner is authorized to approve and license said brands of proper character and make.

Rev., s. 5154; 1917, c. 231, s. 47; 1919, c. 90, s. 47.

As to right to impose tax on lightning rod agents, see generally *State v. Gorham*, 115-721. As to interstate commerce being interfered with, see *State v. Sheppard*, 140-586.

The statute does not require a license for a single act of putting up lightning rods, but for "carrying on the business" of putting up rods: *State v. Sheppard*, 138-579. The possession of more rods than were necessary to rod a particular house is not of itself a violation of the statute, though it may have been a circumstance to be considered, tending to show that defendant was carrying on the business: *Ibid*.

7824. *Hotels.* Each hotel charging for transit custom more than one dollar and less than two dollars per day shall pay an annual tax of twenty-five cents for each

and every room; hotels charging not less than two dollars nor more than three dollars per day, fifty cents per room; hotels charging in excess of three dollars per day, seventy-five cents per room. Each hotel run on the European plan shall pay an annual tax of fifty cents on each room for which the charge is one dollar and fifty cents or less; on rooms for which the charge is over one dollar and fifty cents and less than two dollars and fifty cents, one dollar; on all rooms two dollars and fifty cents or more, one dollar and fifty cents. The office, dining-room, one parlor, the kitchen and two other rooms shall not be counted when calculating the number of rooms in the hotel: Provided, that one-half of the foregoing taxes shall be collected from resort hotels and boarding-houses which are kept open for only six months or less in the year, whether the charges are made at daily, weekly, or monthly rates: Provided further, that this tax shall not apply to boarding-houses charging less than ten dollars per week.

Rev., s. 5155; 1917, c. 231, s. 48; 1919, c. 90, s. 48.

A tax is uniform and consistent with the constitution when it is equal on all persons in the same class, and hence the graduated tax imposed on hotel keepers by section 35 of the revenue act of 1897, which exempts from taxation those whose yearly receipts are less than \$1,000, is constitutional: *Cobb v. Comrs.*, 122-307.

Where a corporation chartered for the purpose of owning and conducting a hotel has paid the franchise tax, the lessee of such corporation is not relieved thereby from paying the tax imposed upon the business of conducting a hotel: *Ibid.*

7825. Restaurants. Each restaurant, or each hotel operating dining service on European plan shall pay an annual license tax as follows: on those having chairs for less than ten persons, five dollars; on those having chairs for more than ten persons and less than twenty-five persons, ten dollars; on those having chairs for more than twenty-five persons, fifteen dollars.

1919, c. 90, s. 48(a).

7826. Cotton compresses. Every individual, firm, corporation, or association of persons engaged in the business of compressing cotton shall pay an annual license tax of two hundred and fifty dollars on each and every compress.

Rev., s. 5156; 1917, c. 231, s. 49; 1919, c. 90, s. 49.

7827. Billiard and pool tables; bowling alleys. On each billiard or pool table, each track of the bowling alley or alley of like kind kept for public use, there shall be paid an annual license tax of twenty-five dollars: Provided, however, that it shall be unlawful for any sheriff or other officer to issue a license under this section to any person or corporation to maintain a billiard or pool table or bowling alley for public use outside of incorporated towns or cities, except with the approval of the county commissioners, and all applications for such licenses are hereby required to be filed with the county commissioners at least ten days before being acted upon, and notice thereof published in some newspaper published in the county once a week for two weeks, or posted at three conspicuous places in the community where the license is to be exercised for two weeks prior to the action of the county commissioners thereon: Provided further, that nothing herein shall be construed to require the payment of a license tax on bowling alleys in public parks or on public playgrounds not operated for gain or profit. Notwithstanding the issuance of license by the sheriff hereunder, any city or

town shall have the right to prohibit the keeping, for public use, of any billiard or pool table, bowling alley, or alleys of like kind within its limits: Provided further, that one-half of the foregoing tax shall be collected from pool rooms at winter or summer resorts which are kept open for not more than five months in the year.

Rev., s. 5157; 1917, c. 231, s. 50; 1919, c. 90, s. 50.

7828. Gift enterprises; prize photographs. Any gift enterprise or any person or establishment offering any article for sale and proposing to present purchasers with any gift or prize as an inducement to purchase, shall pay twenty-five dollars; every itinerant dealer in prize photographs or prizes of any kind shall pay one hundred dollars in each county in which the business is conducted. The taxes in this section shall be paid to the sheriff or tax collector of the county, but shall not be construed as giving license or relieving such person or establishment from any penalties incurred by violation of the law.

Rev., s. 5158; 1917, c. 231, s. 51; 1919, c. 90, s. 51.

Trading stamp dealers do not conduct a gift enterprise: *Winston v. Beeson*, 135-271. See, also, as to gift enterprises, *State v. Perry*, 154-616; *State v. Lipkin*, 169-265; *Mfg. Co. v. Benjamin*, 172-53; *State v. Lowe*, 178-770.

7829. Slot machines. Upon every slot machine operated in this state wherein is kept any article to be purchased by depositing therein any coin or thing of value, and for which may be had any article of merchandise whatsoever, or anything that can be exchanged for any article of merchandise, there shall be paid the sum of two dollars and fifty cents for every machine for each county where set up or operated. Upon every such machine wherein may be seen any picture, or any music may be heard by depositing in the machine any coin or thing of value, and each weighing machine and every machine for making stencils by use of contrivances operated by slot, wherein money or other thing of value is to be deposited, the sum of two dollars and fifty cents for each machine in each county where set up or operated: Provided, that this section shall apply only to such slot machines where the return is in all cases both fixed and certain: Provided further, that no specific license tax shall be levied or collected on merchandise machines delivering merchandise of the market value of the coin deposited and used as an automatic clerk and kept by dealers in their storehouses and paying taxes as a merchant, or slot machines where drinking water is delivered at one cent a glass: Provided further, that any person using, running, or operating a slot machine of any description for any other purpose than above set forth, or machines exhibiting nude or obscene pictures, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than two hundred nor more than five hundred dollars, or imprisoned not less than three months nor more than one year, or both, at the discretion of the court: Provided further, where any machine requires a deposit of more than one cent, the tax shall be five dollars on each machine.

Rev., s. 5159; 1917, c. 231, s. 52; 1919, c. 90, s. 52.

7830. Bagatelle tables, etc. On each bagatelle table, merry-go-round, hobby-horse, switchback railway, shooting gallery, or place for any other game or play, with or without name (unless used for private amusement or exercise alone), the

following graduated tax shall be paid, to wit: In cities or towns of less than five thousand inhabitants, five dollars; from five thousand to ten thousand inhabitants, ten dollars; in all cities or towns of more than ten thousand inhabitants, twenty dollars. If kept in connection with any place where drinks of any kind are sold, fifty dollars. On skating rinks (unless used for private amusement or exercise alone), the following graduated tax, to wit: In cities or towns of less than five thousand inhabitants, five dollars; from five thousand to ten thousand inhabitants, ten dollars; and all cities or towns of more than ten thousand inhabitants, twenty dollars: Provided, that on each bagatelle table, merry-go-round, hobby-horse, switchback railway or shooting gallery carried on outside of any incorporated city or town, the sum of five dollars. If kept in connection with any place where drinks of any kind are sold, fifty dollars.

Rev., s. 5160; 1917, c. 231, s. 53; 1919, c. 90, s. 53.

7831. Stockbrokers. Every dealer in stocks, bonds, or other securities shall pay for the privilege of transacting business an annual license tax in towns of less than five thousand inhabitants, ten dollars; in towns of more than five thousand and less than ten thousand inhabitants, twenty-five dollars; in towns of more than ten thousand and less than fifteen thousand inhabitants, fifty dollars; in towns of more than fifteen thousand inhabitants, one hundred dollars. No county, city, or town shall levy or collect any tax under this section exceeding twenty-five dollars for the county and ten dollars for the city or town.

Rev., s. 5161; 1917, c. 231, s. 54; 1919, c. 90, s. 54.

7832. Bottling works. Each person, firm, or corporation manufacturing or bottling soda water, coca-cola, pepsi-cola, ginger ale, and like preparations shall pay an annual tax, in rural districts and towns of two thousand five hundred inhabitants or less, thirty dollars; in towns of over two thousand five hundred and not exceeding five thousand inhabitants, sixty dollars; in towns of over five thousand and not exceeding ten thousand inhabitants, ninety dollars; in towns and cities of over ten thousand and not exceeding twenty thousand inhabitants, one hundred and twenty dollars; in towns and cities of over twenty thousand inhabitants, one hundred and fifty dollars. Every wholesale dealer dealing in the products enumerated in this section shall pay one-half of the taxes imposed in this section; and when manufacturers or bottlers are also wholesale dealers in the products of other manufacturers, they shall also be liable for the tax as wholesale dealers: Provided, that wholesale dealers dealing in products manufactured or bottled by manufacturers or bottlers who have paid the tax imposed in this section shall be liable for one-fourth of the tax imposed in this section: Provided further, that no county shall levy more than one-half of the amount levied by the state.

Rev., s. 5162; 1917, c. 231, s. 55; 1919, c. 90, s. 55.

7833. Packing houses. Upon every meat packing house doing business in this state and upon every wholesale dealer in meat packing house products who owns and operates in this state a cold storage plant or cold storage warehouse in con-

nection with said wholesale business, the tax shall be one hundred dollars for each county in which said business is carried on: Provided, that nothing in this act shall apply to packers slaughtering within the state as much as fifty per cent of their sales.

Rev., s. 5163; 1917, c. 231, s. 56; 1919, c. 90, s. 56.

An act taxing every meat packing house doing business in the state \$100 for each county in which such business is carried on is valid: *Lacy v. Packing Co.*, 134-567.

See *Comrs. v. Packing Co.*, 135-62.

7834. Newspaper contests. Every person, corporation, or association that conducts contests and offers a prize or prizes to obtain subscriptions to newspapers shall pay an annual license tax of ten dollars for weekly, semi- or tri-weekly newspapers, and twenty-five dollars for each daily newspaper in which said contest is advertised.

1917, c. 231, s. 57; 1919, c. 90, s. 57.

7835. Dealers in oils. Each person, firm, or corporation selling illuminating oil, lubricating oil, benzine, naphtha, or gasoline in this state shall pay an annual license tax to the state treasurer, on or before the first day of July in each year, for the twelve months preceding the first day of June, where the gross sales exceed twenty-five thousand dollars, one per centum upon such gross sales. The said amount of sales shall be returned to the state treasurer by the general manager of such oil company, if a corporation, and if a natural person, by him, and duly sworn, upon forms to be prepared by the state treasurer for that purpose. Any person, firm, or corporation subject to this license tax and doing business in this state without having paid such license tax shall be liable to a penalty of one thousand dollars and in addition thereto to double the tax imposed by this section; and the state treasurer is authorized to bring any suit for the collection of the same in the superior court of Wake county. No county shall impose any tax under this section upon the business of oil dealers. No city or town shall levy a license or privilege tax exceeding ten dollars, and only when there is located in such city or town an agency, station, or warehouse for the distribution and sale of such oils; and the person, firm, or corporation paying the tax upon the gross sales as aforesaid shall not be liable for any other tax except the ad valorem tax upon the property situate and being in this state: Provided, that no tax shall be collected under the provisions of this section while the inspection fees or charges are collected under and by virtue of article fourteen of the chapter on Agriculture, providing for the inspection of illuminating oils and gasoline, or under any act passed by the general assembly of 1917.

Rev., s. 5165; 1917, c. 231, s. 58; 1919, c. 90, s. 58.

7836. Automobiles for hire. Every person, firm, or corporation who keeps automobiles or other motor vehicles for hire, and who in each and every May lists a poll tax or property for taxation in the county in which the business is transacted, shall pay an annual tax of five dollars for each automobile or other motor vehicle kept for that purpose and having seating capacity for not more than seven persons; and for motor vehicles having seating capacity for more than seven persons, ten dollars; and if such person, firm, or corporation aforesaid does not list a poll or property for taxation, the annual tax shall be ten dollars for motor

vehicles having seating capacity for not more than seven persons, and twenty dollars for motor vehicles having seating capacity for more than seven persons. Every person, firm, or corporation operating one or more automobiles for hire shall carry a number plate in a conspicuous place on each machine so operated for hire, on which shall be printed or stamped the words, "For Hire," and also number and date the license expires. Every person, firm, or corporation violating the provisions of this section shall be subject to a fine of five dollars for every day the offense continues without having such license plate. It shall be the duty of the state tax commission to purchase a sufficient number of plates for each county, to be paid for by the state treasurer, and it shall be the duty of the sheriff in each county to purchase a sufficient number of license plates for his county and remit to the state tax commission, to be returned to the state treasurer, one-half of the cost of the license plates to be deducted by the sheriff from the county tax. The authority herein given for purchase of license plates by the state shall include authority for payment for license plates purchased for the state for the years 1917 and 1918: Provided, the penalty provided above shall not apply if the tax has been paid and application for the tag made to the sheriff of the county until tag is furnished by the sheriff.

1917, c. 231, s. 59; 1919, c. 90, s. 59.

7837. Building and loan associations. Every building and loan association which avails itself of the exemption from ad valorem taxation on so much of the value of all its shares as may be represented by the total loans of such association as provided in section 7944, shall pay an annual privilege tax of ten cents on each share in said association issued and outstanding on December thirty-first of the preceding year as shown by report of such association to the insurance commissioner. Such tax shall be payable to and collected by the insurance commissioner for the benefit of the state and county, city or town in which said association is located, and paid over to the treasurer or sheriff of each, one-third to the state, one-third to the county, and one-third to the city or town.

1919, c. 90, s. 60.

See section 7944.

7838. Malt dealers. Every person, firm, or corporation engaged in or conducting the business of manufacturing, buying, or selling malt shall pay an annual tax of ten dollars.

1917, c. 231, s. 61; 1919, c. 90, s. 61.

7839. Tobacco warehouses. 1. *License required.* Every person, firm, or corporation operating a warehouse in which leaf tobacco is sold upon commission shall, on or before the thirty-first day of May in each year, obtain a license from the sheriff of the county in which such warehouse is located, for the privilege of operating such warehouse for the next ensuing year. Such license shall be a personal privilege and shall not be transferable, nor shall any abatement be made in the tax. The license shall be for twelve months and shall expire on the thirty-first day of May of the year following.

2. *Amount of tax.* The tax which shall be paid for such license shall be as follows: If in a warehouse in which the sales of leaf tobacco the previous year were one million pounds or less, twenty-five dollars; if sales for the previous year

were more than one million pounds of leaf tobacco and less than two million pounds, fifty dollars; if the sales for the previous year were two million pounds and less than three million pounds of leaf tobacco, one hundred and twenty-five dollars; if the sales for the previous year were more than three million pounds and less than four million pounds, two hundred dollars; if the sales for the previous year were more than four million pounds and less than five million pounds, three hundred dollars; if the sales for the previous year were more than five million pounds, five hundred dollars.

3. *Commissioner of agriculture to report.* The commissioner of agriculture shall certify to the sheriff of each county on or before the thirtieth day of May of each year the name of each person, firm, or corporation operating a tobacco warehouse in such county, together with the number of pounds sold by such person, firm, or corporation for the preceding year. The commissioner of agriculture shall report to the solicitor of any judicial district in which a tobacco warehouse is located, which shall have failed to make reports of the tobacco sold by such warehouse, and the solicitor shall prosecute any such person, firm, or corporation under the provisions of this act.

4. *Traveling auditors to assist sheriffs.* The traveling auditors appointed by the corporation commissioners shall assist the sheriffs of the various counties in carrying out the provisions of this act, and shall have the right to examine the books of any warehouse for the purpose of verifying the reports made by such warehouse and ascertaining the number of pounds of leaf tobacco which shall have been sold by such warehouse.

5. *Violation a misdemeanor.* Any person, firm, or corporation violating the provisions of this act shall be guilty of a misdemeanor, and upon conviction shall be fined in the discretion of the court.

6. *No county or municipal tax.* No county, city, or town shall levy any additional tax under this section.

1919, c. 90, s. 62.

7840. Newsdealers on trains. All persons, companies, or corporations carrying on the business of selling books, magazines, papers, fruits, confections or other articles of merchandise on railroad trains in this state shall pay an annual license tax as follows: Where such news company operates on less than three hundred miles of railroad or railroads, two hundred and fifty dollars; where such news company operates on three hundred miles and less than five hundred miles of railroad or railroads, five hundred dollars; where such news company operates on five hundred miles or more of railroad or railroads, one thousand dollars. No county or municipality shall levy any tax for the privilege of carrying on said business.

1917, c. 231, s. 63; 1919, c. 90, s. 63.

7841. Soda fountains and carbonated drinks. On each soda fountain operated by any person, firm, or corporation there shall be paid an annual tax as follows: In towns of less than one thousand inhabitants, five dollars; in towns of over one thousand inhabitants and less than five thousand, ten dollars; in towns of over five thousand inhabitants and less than ten thousand, fifteen dollars; in towns of over ten thousand inhabitants and less than fifteen thousand, twenty dollars; in

towns of more than fifteen thousand inhabitants, twenty-five dollars. No county shall levy any tax under this section. Nothing in this section shall be construed to authorize the sale of soft drinks containing cocaine or any of its salts or derivatives.

1917, c. 231, s. 64; 1919, c. 90, s. 64.

7842. Dealers in patent rights and formulas. Every person, firm, or corporation selling or offering for sale any patent right or formula shall pay an annual license tax of ten dollars for each and every county, to be collected by the sheriff.

1917, c. 231, s. 65; 1919, c. 90, s. 65.

7843. Stallions and jacks. All persons, firms, or corporations who own and keep for breeding purposes, for pay, any stallion or jack shall pay an annual license tax of ten dollars on each stallion or jack, the same to be collected by the sheriff of the county in which the horse or jack is kept or used for breeding purposes: Provided, that no county, city, or town shall levy any tax under this section.

1917, c. 231, s. 66; 1919, c. 90, s. 66.

7844. Insurance companies. The officer authorized to collect the tax on insurance, bond, and investment companies, associations, or orders, shall collect and pay into the state treasury charges, fees, and taxes as follows: For each license issued to a life insurance company or association, two hundred and fifty dollars; for each license issued to a fire insurance company or association or to any company or association of companies operating a separate or distinct plant or agencies, two hundred dollars; for each license issued to an accident insurance company or association, two hundred dollars; for each license issued to a marine insurance company or association, two hundred dollars; for each license issued to a surety insurance company or association, one hundred dollars; for each license issued to a plate-glass insurance company or association, one hundred dollars; for each license issued to a boiler insurance company or association, one hundred dollars; for each license issued to a domestic mutual insurance company, fifty dollars; for each license issued to a domestic mutual insurance company operating in not more than two counties, ten dollars; for each license issued to a fraternal order, twenty-five dollars; for each license issued to a bond, investment, dividend, guaranty, registry, title guaranty, or debenture company, one hundred dollars; for each license issued to all other insurance companies or associations, one hundred dollars: Provided, that so much of said license fee collected from fire insurance companies as may be necessary shall be used by the insurance commissioner for the prevention of fire waste and accidents. All of said companies shall pay a tax of two and one-half per centum upon the amount of their gross receipts in this state, with no deduction for dividends, whether returned in cash or allowed in payment or reduction of premiums or for additional insurance, and without any deductions except for return premiums: Provided, that if any general agent shall file with the insurance commissioner a sworn statement showing that at least one-fourth of the entire assets of his company, when his company has assets, are invested in and are maintained in any or all of the following securities or property, viz.: bonds of this state or of any county, city, or town of this state, or any property situate in this state and taxable therein, then the tax shall be one per centum upon the gross receipts aforesaid, and the license fee

shall be one-half that named above; and if the amount so invested shall be three-fourths of the total assets, the tax shall be one-fourth of one per centum and the license fee one-fourth of that named above. Companies paying the tax levied in this section shall not be liable for tax on their capital stock, and no county, city, or town shall be allowed to impose any additional tax, license, or fee. The license fees and taxes imposed in this section shall be paid to the insurance commissioner and by him paid into the state treasury as provided by law.

Rev., s. 5175; 1917, c. 231, s. 67; 1919, c. 90, s. 67.

Case under former statute: *Ins. Co. v. Stedman*, 130-221. The tax on gross receipts means all receipts from business done in the state, whether the money is paid here or forwarded to main office: *Trust Co. v. Young*, 172-470.

7845. Morris plan companies. Every person, firm, association, or corporation operating what are known as Morris plan companies, or doing a similar business in this state, shall pay an annual tax of twenty-five dollars. The tax shall be paid to the insurance commissioner and by him into the state treasury as other licenses, taxes and fees collected by him.

1919, c. 90, s. 67a.

7846. Dealers in pistols, etc. Every merchant, storekeeper, or dealer who shall keep in stock, sell, or offer for sale any pistol or metallic pistol cartridges or cartridges used in pistols shall pay an annual tax of twenty-five dollars; every such dealer who shall keep in stock any bowie knife, dirk, dagger, slungshot, loaded cane or brass, iron, or metallic knuckles, shall pay an annual license tax of one hundred dollars. A separate license shall be secured for each place where sales are made. Dealers in metallic cartridges only shall pay only one-fourth of said tax.

Rev., s. 5176; 1917, c. 231, s. 68; 1919, c. 90, s. 68.

7847. Dealers in cap pistols, fireworks, etc. Every merchant, storekeeper, or dealer selling or offering for sale cap pistols, firecrackers or other fireworks, shall pay an annual license tax of twenty-five dollars. A separate license shall be secured for each place where sales are made.

Rev., s. 5176; 1917, c. 231, s. 68; 1919, c. 90, s. 68a.

7848. Pianos, organs, etc. 1. *Amount of tax.* Every person, firm, or corporation selling pianos, organs, graphophones, victrolas, and other instruments using disc or cylinder records, in this state, shall pay an annual license tax to the treasurer of fifty dollars, and the treasurer shall issue a license to said person, firm, or corporation to sell pianos, organs, graphophones, victrolas, and other instruments using disc or cylinder records, until July first next thereafter. In addition to the license tax above required, every person, firm, or corporation selling pianos, organs, graphophones, victrolas, and other instruments using disc or cylinder records, any one or all of them, shall pay a tax of forty cents on every hundred dollars received from the sale of pianos, organs, graphophones, victrolas and other instruments using disc or cylinder records, any one or all of them, which tax shall be paid to the treasurer before securing an annual license on July first in each year. Any person, firm, or corporation selling pianos, organs, graphophones, victrolas and other instruments using disc or cylinder records, any one

or all of them, without having paid the license tax required by this section shall pay a penalty of two hundred dollars, to be recovered by the treasurer in a civil action in the superior court of Wake county, and shall also pay double the license and sales taxes required by this section for the year then current.

2. *Statement filed.* When a person, firm, or corporation makes application for the license required by this section the treasurer shall require a sworn statement showing the amount of sales of pianos, organs, graphophones, victrolas, and other instruments using disc or cylinder records, any one or all of them, made by the applicant in this state for the year preceding the first day of July then last past. The treasurer may require an itemized statement and may require the production of books and papers, and may make such investigation as he may deem proper; and after making said investigation, the treasurer shall find what the amount was received from sales for said year, and shall collect tax upon the amount at the rate aforesaid. If applicant be a natural person, he shall sign the application and statement of sales and swear to the correctness of the latter. If the application be made by a firm, one of the partners shall verify the application. If it be made by a corporation, the verification of the statement shall be made by one of the managing officers. Any person, firm, or corporation making a false statement for the purpose of defrauding the state out of taxes due under this section shall be guilty of a misdemeanor and shall be liable to a penalty of one thousand dollars, to be recovered by the treasurer in a civil action to be instituted in the superior court of Wake county.

3. *Duplicate license to agents.* Any person, firm, or corporation taking out license under this section may employ an unlimited number of agents and secure a duplicate copy of said license for each agent by paying a fee of one dollar to the treasurer, and the county in which the applicant does business may charge a tax of five dollars; each duplicate license so issued to contain the name of the agent to whom it is issued, and the same to be nontransferable. An agent holding such duplicate copy of license is licensed thereby to sell only the instruments sold by the holder of the original license.

4. *No other license tax required.* No person, firm, or corporation licensed under this section shall be required to pay any other license or privilege tax; and no county shall have the right to impose any license or privilege tax. No city or town shall levy a license or privilege tax exceeding twenty dollars on any dealer having an office or selling from any receiving point. No person, firm, or corporation paying a tax upon gross sales under this section shall be required to pay a tax on such sales under or by virtue of any other section of this act. The state treasurer may in his discretion exempt from tax under this section blind persons and confederate veterans selling or offering for sale musical instruments enumerated in this section, such exemption to be subject to withdrawal in the discretion of the state treasurer at any time and the license canceled.

Rev., s. 5177; 1917, c. 231, s. 69; 1919, c. 90, s. 69.

If the licensee employs more than one salesman, he must take out and furnish each salesman with an additional license: *State v. Morrison*, 126-1123. The legislative intent was that the \$10 license authorizes only the person having it in possession to sell under it. Such has always been the policy of the law, except when duplicates or copies of the license is authorized: *Ibid.*

See *Worth v. Wright*, 122-335.

7849. Cigarettes. Every manufacturer of cigarettes shall pay the following tax: Where the annual output of cigarettes by such manufacturer is less than two hundred and fifty million, two hundred and fifty dollars; where such annual output exceeds two hundred and fifty million, but does not exceed five hundred million, five hundred dollars; where such annual output exceeds five hundred million, two thousand dollars: Provided, that no county, city or town, or township shall levy or collect any tax, assessment, license, or fee from or on such manufacturer except the ad valorem tax. And every person retailing cigarettes shall pay a license tax of five dollars per annum. No county shall levy any tax under this section. No city or town shall levy a license or privilege tax exceeding ten dollars.

Rev., s. 5178; 1917, c. 231, s. 70; 1919, c. 90, s. 70.

7850. Steam laundries. Every person, firm, or corporation engaged in operating a steam laundry shall pay an annual license tax in cities or towns of five thousand inhabitants or less, ten dollars, and cities of over five thousand and less than ten thousand inhabitants, fifteen dollars, and in cities of over ten thousand inhabitants, twenty-five dollars.

1919, c. 90, s. 71.

7851. Sale of automobiles. Every manufacturer of automobiles engaged in the business of selling the same in this state, or every person or persons or corporation engaged in selling automobiles or automobile trucks in this state, the manufacturer of which has not paid the license tax provided for in this section, before selling or offering for sale any such machine shall pay to the state treasurer a tax of five hundred dollars and obtain a license for conducting such business. Any applicant for a license shall furnish the state treasurer with the names of every class or style of machine offered for sale, with a written application for the license. The state treasurer shall, upon the written application of any one who has obtained the license provided in this section and the payment of a fee of five dollars, issue a certified duplicate containing the name of the agent representing the holder of the license, which gives him the privilege of doing business as the agent of the holder of the license. Every one to whom license shall have been issued as provided in this section shall have power to employ an unlimited number of agents to sell only the machine designated in the license, upon the payment of the tax aforesaid. Each county may levy a tax of five dollars upon each agent doing business in the county. It shall be the duty of the state treasurer to have this section printed on the face of each license issued under this act, for the information and protection of parties to whom the same may be issued: Provided, that where a manufacturer, person, or corporation licensed to do business in this state as herein provided employs one or more traveling representatives, such traveling representatives may do business in any county in which the manufacturer, person, or corporation employing such traveling representatives has paid the tax of five dollars to the county as herein provided, and such traveling representatives shall not be required to pay any tax to the county: Provided further, that if any officer, agent, or representative of such manufacturer shall file with the state treasurer a sworn statement showing that at least three-fourths of the entire assets of the said manufacturer of automobiles are invested in any

of the following securities or property, viz.: bonds of the state of North Carolina or of any county, city, or town of the state, or any property situated therein, and returned for taxation therein, the taxes named in this section shall be one-fifth those named: Provided further, that if, at the expiration of a state license issued under this section to any manufacturer or person selling automobiles in the state, such license shall have been in force for less than six months, then upon a renewal of such license for the following year the manufacturer or person shall be allowed by the state treasurer a rebate of two hundred and fifty dollars on the new license.

1917, c. 231, s. 72; 1919, c. 90, s. 72.

The word "automobiles" includes motor trucks and motor vehicles generally: *Motor Co. v. Flynt*, 178-399. The provision reducing the license tax if three-fourths of the assets invested in certain property in the state is constitutional: *Ibid*.

7852. Emigrant agents. Every person, firm, or corporation engaged in procuring laborers for employment out of this state shall pay an annual license tax of two hundred dollars for each county in which such person, firm, or corporation does business, the same to be collected by the sheriff. Any one violating provisions of this section shall be guilty of a misdemeanor and fined not less than two hundred dollars or imprisoned, in the discretion of the court.

Rev., s. 5180; 1917, c. 231, s. 73; 1919, c. 90, s. 73.

Statutes of this nature constitutional: *State v. Hunt*, 129-686; *State v. Roberson*, 136-587.

An officer of a foreign corporation coming into this state and hiring hands for employment by himself as the officer of the corporation, is not "engaged in the business of hiring hands," etc., and is not liable for the tax on emigrant agents: *Lane v. Comrs.*, 139-443.

Occupation of an "emigrant agent" as defined in chapter 75, acts of 1891, does not belong to that class of trades or occupations which are so inherently harmful or dangerous to the public that they may, either directly or indirectly, be restricted or prohibited: *State v. Moore*, 113-697.

Section does not apply to a person who comes into this state and employs laborers to work for him in another state: *Carr v. Comrs.*, 136-125; *State v. Roberson*, 136-587; *State v. Hunt*, 129-686; *State v. Moore*, 113-697.

Tax on the business of procuring laborers for employment outside the state being an exercise of the power of the state to levy taxes, the amount is not reviewable by the courts: *State v. Roberson*, 136-587.

7853. Plumbers, steam and gas-pipe fitters. Every person, firm, or corporation engaged in business as a plumber or steam or gas-pipe fitter, and having in their employ an average of not more than three persons for the previous year, shall pay an annual license tax of ten dollars; and those engaged in such business and having in their employ an average for the previous year of more than three and not more than six persons, an annual license tax of fifteen dollars; and those having an average of more than six persons employed for the previous year, twenty-five dollars.

1919, c. 90, s. 74.

7854. Trading stamps. An annual license tax of two hundred dollars is hereby imposed for the state upon each corporation, firm, association, or person engaged in the business of issuing, selling, or delivering trading stamps or checks, receipts, certificates, tokens, or other similar devices to persons engaged in trade or business, with the understanding or agreement, expressed or implied, that the

same shall be presented or given by the latter to their patrons as a discount, bonus, or premium or as an inducement to secure trade or patronage, and that the corporation, firm, or association or person selling or delivering the same will give to the person presenting or possessing the same, money or other thing of value, or any concession or preference in any way on account of the possession or presentation thereof. Nothing in this act shall be construed to apply to a manufacturer or to a merchant who sells the goods of such manufacturer from offering to present to the purchaser or customer a gift of certain value as an inducement to purchase such goods: Provided, that no county, city, or town shall charge more than one hundred dollars.

Rev., s. 5183; 1917, c. 231, s. 75; 1919, c. 90, s. 75.

Under charter of city of Winston, dealers in trading stamps do not come within the provision of an ordinance taxing gift enterprises: *Winston v. Beeson*, 135-271.

Part 2. Schedule C. Franchise Taxes and Fees

7855. For what purposes levied. The taxes embraced in this schedule shall be listed and paid as specially herein provided, and shall be for the privilege of carrying on the business or doing the act named; and, if a corporation, shall be a tax for the continuance of its corporate rights and privileges given under its charter, if incorporated in this state, or by reason of any act of domestication, if incorporated in another state, and shall be subject to other regulations mentioned in section 7796 under schedule B.

Rev., s. 5184; 1917, c. 231, s. 76; 1919, c. 90, s. 76.

See section 7796 and annotations thereunder.

Acts 1901, ch. 91, levying an annual franchise tax on corporation is lawful, and applies to foreign corporations doing business in this state: *Comrs. v. Packing Co.*, 135-62.

General assembly may require a corporation to pay a license tax for the privilege of carrying on its business, and forbid counties or other municipalities to exact any other license tax or fee: *Loan Assn. v. Comrs.*, 115-410.

It is within the legislative power of taxation, in respect to corporations, to levy any two or more of the following taxes simultaneously: On the franchise (including corporate dividends); on capital stock; on tangible property of the corporation, and on the shares of the capital stock in the hands of the stockholders. The tax on the two subjects last named is imperative: *Comrs. v. Tobacco Co.*, 116-441.

A tax imposed directly by the legislature upon a corporation, or its gross receipts, or the cash value of the shares of its capital stock, or upon each mile of its road at a certain sum per mile, and not assessed by assessors, is a franchise or privilege tax: *Worth v. Railroad*, 89-301.

7856. Returns by railroads. Every steam railroad company and every person or agency operating a steam railroad in this state shall, on or before the thirtieth day of July in each year, make and return to the state auditor, in such form and upon such blanks as shall be furnished by him, a true statement of the gross earnings of their respective roads for the preceding year ending the thirtieth day of June; of the number of miles of road operated by each such company or person and the number of miles in the state, and the gross earnings per mile per annum during such year; which statement shall be verified by the oath of the secretary and treasurer of such companies, or of the person so operating such railroad, and the state auditor shall certify said amount to the state treasurer.

Rev., s. 5185; 1917, c. 231, s. 77; 1919, c. 90, s. 77.

7857. Rate of taxation on railroads. The annual license tax for operating such railroads within the state shall be as follows: When gross earnings per mile are one thousand dollars or less per year, a tax of two dollars per mile; when gross earnings per mile exceed one thousand dollars per year, but do not exceed two thousand dollars, a tax of four dollars per mile; when gross earnings per mile exceed two thousand dollars per year, but do not exceed three thousand, a tax of six dollars per mile; when gross earnings per mile are in excess of three thousand dollars per year and not over five thousand dollars per year, a tax of eight dollars per mile; when gross earnings exceed five thousand dollars per mile per year, a tax of ten dollars per mile. The tax imposed by this section shall be paid to the state treasurer at the time of making the report provided in the preceding section. No county, city, or town shall be allowed to collect any tax under this section.

Rev., s. 5186; 1917, c. 231, s. 78; 1919, c. 90, s. 78.

See annotations under sections 7796, 7855.

7858. Tax on express companies. Every express company doing business in this state shall, on or before the thirtieth day of July in each year, make and return to the corporation commission a statement of the total number of miles of railroad lines over which such express company operates in this state, showing also the number of miles over which an express business has been in business for two years or less; the said corporation commission shall certify the same to the state treasurer as a basis for assessment and collection of the tax levied in the following schedule:

Each express company doing business in this state shall pay to the state treasurer an annual privilege or license tax of three dollars per mile for each mile of railroad over which such company operates in this state, as shown by the report of such express company to the corporation commission: Provided, that only fifty per cent of the mileage tax herein provided for shall be levied and collected from express companies which earned not more than five per cent upon their capital investment the previous calendar year: Provided, that no county shall levy any tax under this section. There may be levied and collected by every incorporated municipality in the state of North Carolina from each express company, for the privilege of doing business within the limits of such municipalities, a privilege or license tax, to be computed and based on the population of the municipalities, as follows: Those having a population of five hundred or less, five dollars per annum; those having a population of five hundred and not exceeding one thousand, ten dollars per annum; those having a population of one thousand and not exceeding five thousand, twenty dollars per annum; those having a population of five thousand and not exceeding ten thousand, thirty dollars per annum; those having a population of ten thousand and not exceeding twenty thousand, fifty dollars per annum; those having a population of exceeding twenty thousand, seventy-five dollars per annum: Provided further, that nothing in this section shall be construed to authorize the imposition of any tax upon interstate commerce, or upon any business transacted for the federal government.

Rev., s. 5187; 1917, c. 231, ss. 79, 79(a); 1919, c. 90, ss. 79, 79(a).

See annotations under sections 7796, 7855.

7859. Tax on telegraph companies. Every person, firm, or corporation operating within this state the apparatus necessary to communication by telegraph shall pay, for the privilege of engaging in such business, to the state an annual license tax of two dollars per mile for each pole-mile of such telegraph line owned or operated by them within the state, as shown by the report of such telegraph company to the tax commissioners under section 7949, machinery act, and it shall be the duty of the tax commissioners to certify to the state auditor the number of miles of line operated by such telegraph company in this state, and it shall be the duty of the state treasurer to collect the tax as herein levied upon the basis of mileage as reported: Provided, that nothing in this section shall be construed to authorize the imposition of any tax upon interstate commerce or upon any business transacted for the federal government: Provided, that no county shall levy any additional tax under this section, but towns may levy the following taxes: Those having a population of one thousand and not exceeding five thousand, ten dollars; from five thousand to ten thousand, fifteen dollars; from ten thousand to twenty thousand, twenty dollars; over twenty thousand, fifty dollars.

Rev., s. 5188; 1917, c. 231, s. 80; 1919, c. 90, s. 80.

See annotations under sections 7796, 7855.

7860. Tax on telephone companies. Every telephone company doing business in this state shall pay an annual tax of two and one-half per cent on the gross receipts of such telephone company within the state, reckoning for the purpose of ascertaining the amount of such gross receipts the proportion of the interstate business done within the state, which is properly credited to North Carolina: Provided, that if any such company shall file with the board of state tax commissioners a statement signed and sworn to by its principal officer in this state, showing that at least one-quarter of the entire assets of his company, when his company has assets, are invested in and are maintained in any or all of the following securities or property, viz.: Bonds of this state or of any county, city, or town of this state, or any property situated in this state and taxable therein, then the tax shall be one and one-half per cent; and if the amount so invested shall be one-half of its total assets, the tax shall be one per cent; and if the amount so invested shall be three-fourths of its total assets, the tax shall be one-half of one per cent. The superintendent, general manager, or other chief officer of every such company shall make a return, under oath, to the treasurer of the state, within ten days after the first day of January, April, July, and October of each year, of the amount of the gross receipts of the company for the quarter ending on the first day of the month immediately preceding, and pay to the treasurer the tax herein imposed at the time of making such return. It shall be the duty of each sheriff to report to the treasurer any such company doing business in his county. In case of default of such return and payment of tax, the company shall pay a penalty of one thousand dollars, to be collected by such sheriff as the treasurer of the state shall designate, by distress or otherwise: Provided further, no county, city, or town shall be allowed to impose an additional tax, license, or fee to that provided in this section, except the ad valorem tax.

Rev., s. 5189; 1917, c. 231, s. 81; 1919, c. 90, s. 81.

See annotations under sections 7796, 7855.

7861. Franchise tax on private corporations. 1. Domestic corporations.

a. Report to be made. Each corporation organized under the laws of this state for profit shall make a report, in writing, to the state tax commission, annually during the month of May, in such form as the commission may prescribe. Such report shall be signed and sworn to before an officer authorized to administer oaths, by the president, vice-president, secretary, or general manager of the corporation, and forwarded to the commission, and shall contain:

- (1) The name of the corporation.
- (2) The location of its principal office.
- (3) The name of the president, secretary, treasurer, and members of the board of directors, with postoffice address of each.
- (4) The date of the annual election of officers.
- (5) The amount of authorized capital stock and the par value of each share.
- (6) The amount of capital stock subscribed, the amount of capital stock issued and outstanding, and the amount of capital stock paid up.
- (7) The nature and kind of business in which the corporation is engaged, and its place or places of business.
- (8) The change or changes, if any, in the above particulars made since the last annual report.

b. Amount of tax determined. Upon the filing of such report the commission, after finding the report to be correct, shall, on or before the first Monday of August, determine the amount of the subscribed or issued and outstanding capital stock of each such corporation. On the first Monday in August, or as soon thereafter as practicable, the commission shall certify the amount so determined by it to the auditor of the state, who shall charge for collection on or about August fifteenth, as herein provided, from such corporation, a fee of one twenty-fifth of one per cent upon its subscribed or issued and outstanding capital stock, which fee shall not be less than five dollars in any case. Such fee shall be payable to the treasurer of the state on or before the first day of the following October. No county, city, or town shall have the power to levy any franchise tax under this section.

2. Foreign corporations. a. Report to be made. Annually during the month of July each foreign corporation, for profit, doing business in this state, and owning or using a part or all of its capital or plant in this state, and subject to compliance with all other provisions of law, and in addition to all other statements required by law, shall make a report in writing to the commission in such form as the commission may prescribe. Such report shall be signed and sworn to before an officer authorized to administer oaths, by the president, vice-president, secretary, superintendent, or managing agent in this state, and forwarded to the commission; and it shall contain:

- (1) The name of the corporation and under the laws of what state or country organized.
- (2) The location of its principal office.
- (3) The names of the president, secretary, treasurer, and members of the board of directors, with the postoffice address of each.
- (4) The date of the annual election of officers.
- (5) The amount of authorized capital stock, and the par value of each share.

(6) The amount of capital stock subscribed, the amount of capital stock issued, and the amount of capital stock paid up.

(7) The nature and kind of business in which the company is engaged and its place or places of business, both within and without the state.

(8) The name and location of its office or offices in this state, and the name and address of the officers or agents of the corporation in charge of the business in this state.

(9) The value of the property owned and used by the company in this state, where situated, and the value of the property owned and used outside of this state, and where situated.

(10) The volume of business done by the company in this state.

(11) The volume of business done by the company outside of the state, and where the said business is done.

(12) The change or changes, if any, in the above particulars, made since the last annual report.

b. *Stock assessed.* Upon the filing of this report the commission, from the facts thus reported and any other facts coming to its knowledge bearing upon the question, shall, on or before the first Monday in September, assess and fix the proportion of the subscribed or issued and outstanding capital stock of the company represented by its property or business in this state, and certify the same to the auditor of state on or before the first Monday in October.

c. *Amount of tax.* On or before October fifteenth the auditor of state shall charge for collection, as herein provided, annually, from such company, in addition to the initial fees otherwise provided for by law, for the privilege of exercising its franchise in this state, a fee of one twenty-fifth of one per cent upon the proportion of the subscribed or issued and outstanding capital stock of the corporation represented by property owned and used or business transacted in this state as found and certified by the state tax commission, which fee shall not be less than five dollars in any case. Such fee shall be payable to the treasurer of the state on or before the first day of the following December. No county, city, or town shall have the power to levy any franchise tax under this section.

3. *Certain corporations exempt.* Nothing in the preceding subsections shall apply to banks, insurance companies, fraternal benefit associations, building and loan associations, railroad, express, telephone or telegraph companies, or other corporations upon which a franchise tax may be levied in other sections of this act.

4. *General provisions.* a. *Findings reviewed.* Between the dates herein fixed for the determination of the amount of subscribed or issued and outstanding capital stock of a domestic corporation and the proportion of the authorized capital stock of a foreign corporation, represented by property owned and used or business transacted by it in this state, and the dates herein fixed for the certification to the auditor of the state of such amount or proportion, the commission may, on the application of any person or company interested, or on its own motion, review and correct its findings.

b. *Receipt given.* Upon the payment of the tax or fee to the treasurer of the state, he shall make out and deliver to the public utility or corporation so paying a receipt for the payment of the tax or fee herein provided for.

c. *Lien.* The fees, taxes, and penalties herein required to be paid shall be the first and best lien on all property of the public utility or corporation, whether such property is employed by the public utility or corporation in the prosecution of its business or is in the hands of an assignee, trustee, or receiver for the benefit of the creditors and stockholders thereof.

5. *Penalties.* If a public utility or corporation required to file a report fails or neglects to make such report as required herein, it shall be subject to a penalty of ten dollars per day for each day's omission after the time limit in this act for making such report.

6. *Action for recovery.* Such taxes, fees and penalties thereon may be certified by the state auditor to the sheriff of the county in which such company has its home office, or of any county in which any such company may own property, for collection as provided in section 7771. If collection is not made in this way, such taxes or fees and penalties thereon may be recovered by an action in the name of the state, which may be brought in the superior court of Wake county, or in any county in which such corporation has an office or place of business, or in which such public utility is doing business, or the line of any street, suburban or interurban railroad company or railroad company is located, and such superior court shall have jurisdiction of such action regardless of the amount involved therein. The attorney-general, on request of the state treasurer, shall institute such action in the superior court of Wake county, or of any such counties as the state treasurer may direct. In any such action it shall be sufficient to allege that the tax, fee, or penalty sought to be recovered stands charged on the delinquent duplicate of the treasurer of state, and that the same has been unpaid for a period of thirty days after having been placed thereon.

7. *Failure of foreign corporations to comply.* All foreign corporations, and the officers and agents thereof, doing business in this state, shall be subject to all the liabilities and restrictions that are or may be imposed upon corporations of like character, organized under the laws of this state, and shall have no other or greater powers. Every contract made by or on behalf of any such foreign corporation, affecting the liability thereof or relating to its property within this state, before it has complied with the provisions of law for authority to do business within the state, shall be wholly void on its behalf and on behalf of its assigns, but shall be enforceable against it or them. Nothing contained in this subsection shall be held or construed to apply to insurance corporations, fraternal beneficiary associations, or building and loan associations, banking, railroad, express, telephone, and telegraph companies.

8. *Forfeiture for violation.* a. *Rights terminated.* If a corporation, whenever organized, required by the provisions of this section to file any report or return or pay any tax or fee, either as a public utility or as a corporation organized under the laws of this state, for profit, or as a foreign corporation for profit doing business in this state and owning and using a part or all of its capital or plant in this state, or as a sleeping car, freight line, or equipment company, fails or neglects to make any such report or return or to pay any such tax or fee for ninety days after the time prescribed for making such report or return or for paying such tax or fee, the commission shall certify such fact to the secretary of

state. The secretary of state shall thereupon cancel the articles of incorporation of any such corporation which is organized under the laws of this state by appropriate entry upon the margin of the record thereof, or cancel the certificate of authority by any such foreign corporation to do business in this state, by proper entry. Thereupon all the powers, privileges, and franchises conferred upon such corporation by such articles of incorporation or by such certificate of authority shall cease and determine. The secretary of state shall immediately notify such domestic or foreign corporation of the action taken by him.

b. *Penalty for acting.* Any person who shall exercise, or attempt to exercise, any powers, privileges, or franchises under the articles of incorporation or certificate of authority, after the same are canceled, as provided in any section of this act, shall be fined not less than one hundred dollars nor more than one thousand dollars.

9. *How charter restored.* Any corporation whose articles of incorporation or certificate of authority to do business in this state have been canceled by the secretary of state, as provided in the preceding subsections, upon the filing, within two years after such cancellation with the secretary of state, of a certificate from the commission that it has complied with all the requirements of this act and paid all taxes, fees, or penalties due from it, and upon the payment to the secretary of state of an additional penalty of fifty dollars, shall be entitled to again exercise its rights, privileges, and franchises in this state, and the secretary of state shall cancel the entry made by him as to forfeiture under the provisions of this section, and shall issue his certificate entitling such corporation to exercise its rights, privileges, and franchises.

10. *Injunction may issue.* In addition to all other remedies for the collection of any taxes or fees due under the provisions of this act, the attorney-general shall, upon request of the state treasurer, whenever any taxes, fees or penalties due under this act from any public utility or corporation shall have remained unpaid for a period of ninety days, or whenever any corporation or public utility has failed or neglected for ninety days to make or file any report or return required by this act, or to pay any penalty for failure to make or file such report or return, apply to the superior court of Wake county, or of any county in the state in which such public utility or corporation is located or has an office or place of business, for an injunction to restrain such public utility or corporation from the transaction of any business within this state until the payment of such taxes or fees and penalties thereon, or the making and filing of such report or return and payment of penalties for failure to make or file such report or return, and the costs of such application, which shall be fixed by the court. Such petition shall be in the name of the state, and if it is made to appear to the court, upon hearing, that such public utility or corporation has failed and neglected, for ninety days, to pay such taxes, fees, or penalties thereon, or to make and file such reports or to pay such penalties for failure to make or file such reports or returns, such court shall grant and issue such injunction. All actions brought under this act shall have precedence over any civil cause of a different nature pending in such court, and such court shall always be deemed open for the trial of any such action brought therein.

11. *Quo warranto proceedings.* If any corporation fails or neglects to make and file the reports and returns required by this act, or to pay the penalties provided for failure to make and file such reports or returns, for a period of ninety days after the time prescribed therefor, the attorney-general, on request of the commission, shall commence an action of quo warranto in the superior court of Wake county or any county in this state in which such corporation is located or has an office or place of business, to forfeit and annul its privileges and franchises. If the court is satisfied that any such corporation is in default as aforesaid, it shall render judgment ousting such corporation from the exercise of its privileges and franchises within this state, and shall otherwise proceed as provided by law.

12. *Failure of officers of corporation to comply.* Whoever, being an officer, agent, or employee of any public utility, company, firm, person, copartnership, corporation, or association subject to the provisions of any law which the tax commission of North Carolina is required to administer, shall fail or refuse to fill out and return any blanks as required by such law, or shall fail or refuse to answer any questions therein propounded, or shall knowingly or wilfully give a false answer to any such question wherein the fact inquired of is within his knowledge, or who shall, upon proper demand, fail or refuse to exhibit to such commission or any commissioner, or any person duly authorized, any book, paper, account, record, or memorandum of such public utility which is in his possession or under his control, shall be fined not more than one thousand dollars for each offense.

13. *Forfeiture by corporation.* A forfeiture of not less than five hundred dollars nor more than one thousand dollars shall be recovered from any such public utility, company, firm, person, copartnership, corporation, or association for each violation of the preceding subsection when such officer, agent, or employee acted in obedience to the direction, instruction, or request of such public utility, company, corporation, or association, or any general officer thereof.

14. *Separate offenses.* Every day during which any public utility, company, corporation, association, firm, copartnership, officer, or individual, subject to the provisions of any law which the tax commission of North Carolina is required to administer, or any officer, agent, or employee thereof, shall wilfully fail to observe and comply with any order or direction of such commission or to perform any duty enjoined by such law, shall constitute a separate and distinct offense.

15. *Information to be furnished.* Each company, firm, corporation, person, association, copartnership, or public utility shall furnish the commission, in the form of returns prescribed by it, all information required by law and all other facts and information, in addition to the facts and information in this act specifically required to be given, which the commission may require to enable it to carry into effect the provisions of the laws which the commission is required to administer, and shall make specific answers to all questions submitted by the commission.

16. *Blanks prepared.* The commission shall cause to be prepared suitable blanks for carrying out the purpose of the laws which it is required to administer, and, on application, furnish such blanks to each company, firm, corporation, person, association, copartnership, or public utility subject thereto.

17. *Blanks filed and verified.* Any such company, firm, corporation, person, association, copartnership or public utility receiving from the commission any blanks with directions to fill them, shall cause them to be properly filled out so as to answer fully and correctly each question therein propounded, and in case it is unable to answer any question, it shall, in writing, give a good and sufficient reason for such failure. The answers to such questions shall be verified under oath by such person, or by the president, secretary, superintendent, general manager, principal accounting officer, partner, or agent, and returned to the commission, at its office, within the period fixed by the commission.

18. *Time extended.* The commission, when it deems the same necessary or advisable, may extend to any corporation or public utility a further specified time, not to exceed ninety days, within which to file any report required by law to be filed with the commission, in which event the attaching or taking effect of any penalty for failure to file such report or pay any tax or fee shall be extended or postponed accordingly.

Rev., s. 5190; 1917, c. 231, s. 82; 1919, c. 90, s. 82.

See annotations under sections 7796, 7855.

7862. Tax on marriage license. The tax on marriage license shall be one dollar, and shall be paid to the register of deeds. It shall be the duty of the register of deeds to render, annually, to the sheriff, on the first Monday in December, sworn statements in detail of taxes received by him under this section, and at the same time pay him the money thus received; and thereupon the sheriff shall file the statements of the register of deeds with the clerk of the superior court. The marriage license tax shall be paid to the state treasurer by the sheriff of the county in which the same is collected when he settles for the other state taxes. The counties may levy the same tax upon marriage licenses as is levied by the state.

Rev., s. 5191; 1917, c. 231, s. 83; 1919, c. 90, s. 83.

7863. Tax on official seals. Whenever the seal of state, of the treasury department, or other public officer required by law to keep a seal (not including clerks of the courts, other county officers and notaries public) shall be affixed to any paper, the tax shall be as follows, to be paid by the party applying for the same: For the great seal of the state, on any commission, two dollars; on warrants of extradition for fugitives from justice from other states, a reciprocal seal tax and fee shall be charged, i. e., the same fee and seal tax must be collected from the state making requisition which is charged this state for like service. All fees and seal taxes of whatever kind collected by the private secretary of the governor shall be paid into the treasury quarterly; for the seal of the state department, one dollar, to be collected by the secretary of state and paid by him into the treasury; for the seal of the state treasurer, to be collected by him and accounted for as other public money, one dollar. Such officers shall keep an account of the number of times their seals may be used, and shall deliver to the proper officer a sworn statement thereof. Whenever a scroll is used in the absence of a seal by any of the said officers, the tax shall be on the scroll. Seals affixed for the use of any county or the state or used on the commissions of officers of the militia, or any other public officer not having a salary, or under the pension law, or under any

process of court, shall be exempt from taxation: Provided, that no fee shall be charged for the affixing of a seal to any commission issued by the governor to any person in the employ of the state or to be employed by the state under this section or under section 3859; but this shall not be construed to apply to commissions issued to notaries public or justices of the peace. The officers collecting the said taxes and fees may retain as compensation five per centum only, except in cases of sheriffs, whose compensation shall be allowed by the auditor. Any person receiving taxes under this section and wilfully refusing or neglecting to pay the same as required, shall be guilty of a misdemeanor, and upon conviction shall be fined not more than five hundred dollars or imprisoned at the discretion of the court.

Rev., s. 5192; 1917, c. 231, s. 84; 1919, c. 90, s. 84.

Part 3. General Provisions as to Licenses

7864. License procured before beginning business. Each person, firm, or corporation who engages in any business or practices any profession for which a license is required by this chapter, except where the amount of the tax is contingent upon the amount of business transacted, shall procure such license annually in advance on or before the thirty-first day of May, or before engaging in the business or practicing the profession for which a tax is levied. Any person, firm, or corporation who engages in any business or practices any profession for which a license is required without first having procured a license therefor shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, in the discretion of the court: Provided, the fine shall not be less than twenty per cent of the tax in addition to the tax and the cost.

1917, c. 231, s. 85; 1919, c. 90, s. 85.

7865. License must be present; no duplicates. It shall be unlawful for any person to carry on or practice any itinerant trade, business, or profession for which a license is required under this chapter without having in his actual possession at the time of so carrying on or practicing such trade, business, or profession the license or duplicate thereof. Neither the state treasurer, secretary of state nor sheriff shall have authority to issue a duplicate of any license unless expressly authorized to do so by this chapter; but each person, firm or corporation shall be required to take out a separate license for each agent. Any person violating the provisions of this section shall be guilty of a misdemeanor.

Rev., s. 5200; 1917, c. 231, s. 88; 1919, c. 90, s. 88.

Each salesman must have a separate license: *State v. Morrison*, 126-1123.

7866. License kept posted. It shall be unlawful for any person, firm, or corporation to carry on any business or practice any profession for which a license is required by this act without having the special tax license therefor posted in a conspicuous place at the place where such business is carried on; and if the business that is made taxable is carried on at two or more separate places, a separate license for each business shall be required. Any person violating the provisions of this section shall be liable to a penalty of twenty-five dollars.

1917, c. 231, s. 87; 1919, c. 90, s. 87.

7867. Penalty for failure to obtain license. Any person, firm, or corporation who is liable for any license or privilege tax under schedules B and C, and who practice their or its profession or trade without paying said license or privilege tax, shall be subject to a penalty of two hundred and fifty dollars, the same to be recovered by the state tax commission in an action to enforce same in the superior court of Wake county or in the county of the defendant. Every person engaged in any itinerant business that is made taxable under the revenue act shall have with him when so engaged in such business either the original license required to be obtained for engaging in each business or a duplicate thereof, and shall exhibit the same upon demand of any sheriff, deputy, constable, or other officer.

1917, c. 234, s. 117; 1919, c. 92, s. 117.

7868. License books furnished. The state tax commission shall, not later than April fifteenth in each year, furnish the sheriff in each county a book of blank license certificates, with corresponding stubs consecutively numbered, which shall provide separate blank space both for the state and for the county tax. Such license shall bear inscription, "Issued by State Tax Commission," and no other form of license certificate issued by the sheriff or tax collector of any county shall after the first day of May, 1919, be a valid license for any of the trades or professions taxable under this act.

1917, c. 231, s. 86; 1919, c. 90, s. 86.

7869. Duties of sheriff as to license tax. Except where otherwise provided, the sheriffs and tax collectors of the several counties of the state shall be the agents of the state for the issuing of license and collection of license taxes provided for in this subchapter; and it shall be their duty from time to time to make diligent inquiry if all parties within their respective counties who are liable for any such specific tax have paid the same; and if after sixty days from the first day of May any person, firm, or corporation is found to be carrying on any business or practicing any profession for which a license is required, without such license, it shall be the duty of such sheriff to demand the immediate payment of the tax, with an additional penalty of twenty per centum (the said penalty not to exceed ten dollars in any one case) as a penalty for failure to procure such license before engaging in such business or practicing such profession as required by law; and in default of such immediate payment the sheriff shall have power, and it shall be his duty, to levy upon any personal or real estate owned by such person, firm, or corporation, and sell the same for the payment of said tax, penalty, and costs, in the same manner as provided by law for levy and sale of property for collection of other taxes; and if sufficient property is not found it shall be his duty to swear out a warrant before some justice of the peace of his county for the violation of this act, as provided in section 7864: Provided, that the sheriff shall not be liable for false arrest for wrongfully levying upon any property under this section unless it shall appear that the sheriff did so maliciously: Provided further, that no sheriff shall issue any license under schedule B after the expiration of sixty days from the first day of May without collecting the penalty herein provided, unless it be shown that the person, firm, or corporation to whom

such license is issued did not engage in the business or practice the profession for which license is required after the first day of May and prior to the issuance of said license.

Rev., ss. 2876, 2877, 5196; 1917, c. 231, s. 89; 1919, c. 90, s. 89.

License taxes are, in effect, assessed by statute and become due and collectible, as a debt due to state, as soon as the party assumes to exercise, as a business, the profession, trade, or occupation upon which tax is imposed: *Worth v. Wright*, 122-335.

An action for collection of license tax on business of selling pianos, and made payable directly to state treasurer, was properly brought by that officer in his own name, although it might have been brought in name of state: *Ibid*.

7870. Sheriff not liable for prosecution in good faith. No action for damages shall be prosecuted or maintained by any person against any sheriff or his deputy who in good faith has arrested or who has arrested and prosecuted, or who may hereafter arrest or who may hereafter arrest and prosecute any person who may have refused or may fail or refuse to pay to such sheriff or his deputy any tax or taxes imposed by any act of the general assembly, whether such act be valid or invalid.

Rev., s. 2878; 1905, c. 180.

7871. Highest tax collected. Should there be any doubt as to which license fee any corporation, firm, or individual should pay on account of the business partaking of the nature of more than one subject of taxation, such corporation, firm, or individual shall be charged the highest license which might be levied. But this discretion shall not be exercised by the sheriff when the businesses carried on are separate and distinct branches, but each shall then be taxed as required by law.

Rev., s. 5258; 1917, c. 234, s. 95; 1919, c. 92, s. 95.

7872. Sheriff to report on license taxes. The sheriff of each county, within ninety days after the tenth day of March, 1919, and every six months thereafter, and as often as he may be called upon, shall ascertain and furnish to the state tax commission, upon blanks to be furnished by said commission, a complete list of all subjects in his county liable for tax under schedules B and C of the revenue act, which list shall be duly verified upon the oath of the sheriff, and the state tax commission shall deliver a copy of such return to the state auditor. Any sheriff failing to make the report provided for in this section within thirty days of the time prescribed shall forfeit and pay to the state the sum of two hundred and fifty dollars, to be recovered on suit instituted by the state tax commission in the superior court of Wake county.

Rev., s. 5242; 1917, c. 234, s. 90; 1919, c. 92, s. 90.

7873. Monthly returns of license taxes. All city, county, or state officers authorized to collect or receive privilege taxes or license fees for the state shall make return of the same on the first of every month to the auditor, and within ten days thereafter pay the amount mentioned in said return to the state treasurer; and further, it shall be the duty of the state treasurer to immediately notify the state tax commission of any failure upon the part of any official to account as aforesaid. Any officer violating this section shall be guilty of a misdemeanor.

Rev., s. 5243; 1917, c. 234, s. 94; 1919, c. 92, s. 94.

7874. Special agents to assist sheriff. It shall be the duty of the state tax commission to employ such number of traveling auditors or special agents, not exceeding three, as in their judgment necessary, to assist the sheriffs of the several counties of the state in securing the faithful observance of the provisions of this act and of the revenue laws of the state. Such traveling auditors, upon presentation of certificate of authority from the state tax commission, shall have access to the books and records of any county officer in any county in the state.

1917, c. 231, s. 90; 1919, c. 90, s. 90.

7875. Fines and penalties to be paid to school fund. Whenever any officer, including justices of the peace, receives or collects a fine, penalty, or forfeiture in behalf of the state, he shall, within thirty days after such reception or collection, pay over and account for the same to the treasurer of the county board of education for the benefit of the fund for maintaining the free public schools in such county. Whenever any fine or penalty is imposed by any officer the said fine or penalty shall be at once docketed, and shall not be remitted except for good and sufficient reasons, which shall be stated on the docket.

Rev., s. 5194; 1917, c. 231, s. 93; 1919, c. 90, s. 93.

See section 1324. When a defendant has paid the fine, and then a pardon is granted, he is entitled to a return of the fine if it is still within the control of the court: *Bynum v. Turner*, 171-86.

Fines and penalties distinguished: *State v. Maultsby*, 139-583, and cases cited.

7876. Misappropriation of taxes a misdemeanor. Any officer, including justices of the peace, violating the preceding section shall be guilty of a misdemeanor, and upon conviction shall be punished by fine or imprisonment, at the discretion of the court.

Rev., s. 5195; 1917, c. 231, s. 94; 1919, c. 90, s. 94.

See section 4276. See *State v. Hill*, 91-561; *State v. Connelly*, 104-797.

7877. County may levy similar tax unless prohibited. In cases where a specific license tax is levied for the privilege of carrying on any business, trade or profession, the county may levy the same tax, and no more: Provided, no provision to the contrary is made in the section levying the specific license tax.

Rev., s. 5197; 1917, c. 231, s. 95; 1919, c. 90, s. 95.

See section 7796.

7878. Construction of revenue act. It shall be the duty of the state treasurer to decide all questions presented to him which may arise upon the construction and execution of all sections of this act imposing license taxes which are payable directly to the state treasurer, and of the state tax commission to construe all sections of this act imposing license taxes which are payable to the sheriffs and tax collectors of the several counties and to the clerks of the superior courts. Such decisions by the state treasurer and the state tax commission shall be prima facie correct and a protection to the officers affected thereby. The population of cities and towns where the license tax is graduated in this act with respect to population shall be the number of inhabitants as determined by the last census of the United States government.

1917, c. 231, s. 92; 1919, c. 90, s. 92.

7879. Appropriation to carry out this act. A sum not to exceed two thousand five hundred dollars is hereby annually appropriated, out of any moneys not otherwise appropriated, to be expended by the treasurer of the state as he may deem best and necessary to secure the prompt and proper collection of taxes and the protection of the treasury; and seven thousand five hundred dollars or so much thereof as may be necessary is hereby annually appropriated to be used by the auditor of the state for the proper enforcement of the machinery act, and in the employment and expenses of a traveling auditor.

Rev., s. 5198; 1917, c. 231, s. 96; 1919, c. 90, s. 96.

7880. How far other acts repealed. All laws imposing taxes the subjects of which are revised in this act are hereby repealed: Provided, that this repeal shall not extend to the provisions of any law so far as they relate to the taxes listed or which ought to or would have been listed, or which may have been due previous to the tenth day of March, 1919.

1919, c. 90, s. 97.

SUBCHAPTER II. ASSESSMENT AND LISTING OF TAXES

(Machinery Act)

[The machinery act of 1919, chapter 92 of the public laws of 1919, is incorporated in this subchapter. The revaluation act, chapter 84 of the public laws of 1919, has been omitted because its permanency as a system seems to depend upon the action of the legislature to which report is to be made.]

ART. 4. BOARD OF STATE TAX COMMISSIONERS

7881. Corporation commission constitutes board. In addition to the duties imposed upon the board of corporation commissioners by the law creating such board, they are hereby created a board of state tax commissioners, with powers and duties prescribed under this article.

Rev., s. 1119; 1917, c. 234, s. 1; 1919, c. 92, s. 1.

An action to compel the performance of duty should be against the corporation commission as a body, and not against the individuals: *Shoe Co. v. Travis*, 168-599.

7882. Members take oath of office. The members of the board shall take and subscribe the constitutional oath of office, to be filed with the secretary of state.

Rev., s. 1120; 1917, c. 234, s. 2; 1919, c. 92, s. 2.

7883. General supervision of tax system. 1. It shall be the duty of such board to have general supervision of the system of taxation throughout the state, and to have and exercise general supervision over the administration of all assessment and tax laws, over all county, township, and city tax assessors and boards of equalization, to the end that all assessments of property, real, personal, and mixed, be made relatively just and uniform, and at its true value in money; to require all county, township, and city assessors, boards of equalization and levy

and assessment officers, under penalty of forfeiture and removal from office as such assessors or boards, to assess all property of every kind and character at its true value in money.

2. They shall confer with and advise assessing officers as to their duties under the law, and institute proper proceedings to enforce the penalties and liabilities provided by law for public officers, officers of corporations and individuals failing to comply with this subchapter; prefer charges to the governor against assessing and taxation officers who violate the law or fail in the performance of their duties in reference to assessments and taxation; and in the execution of these powers the said board may call upon the attorney-general or any prosecuting attorney in the state to assist the board, and any person or officer who fails or refuses to comply with any lawful order of the state tax commission shall be subject to a penalty or forfeiture of one hundred dollars, the same to be imposed by order of said commission, and, in addition, any such person or officer so offending shall be liable to punishment by said board as for contempt.

3. At least thirty days previous to the date fixed for listing taxes they shall prepare a pamphlet for the instruction of tax assessors, which shall, in as plain terms as possible, explain the proper working of the tax laws of the state, and shall call particular attention to any points in the administration of the laws which have seemed to be overlooked or neglected. They shall advise the assessors of the practical working of the laws and explain any points which seem to be intricate and upon which assessors may differ.

4. They shall receive complaints as to property liable to taxation that has not been assessed or of property that has been fraudulently or improperly assessed through error or otherwise, and investigate the same, and take such proceedings and make such orders as will correct the irregularity complained of, if found to exist.

5. They shall see that each county in the state is visited by at least one member of the board as often as is necessary, to the end that all complaints concerning the law of assessment and taxation may be heard; that information concerning its workings may be collected; that all assessing and taxation officers comply with the law and all violations thereof be punished, and that all proper suggestions as to amendments and changes may be made.

6. They shall require from any register of deeds, clerk of court, mayor and clerk of towns, or any other officer in this state, on forms prescribed by the board, such annual or other reports as shall enable the board to ascertain the assessed valuations of all property listed for taxation throughout the state under this chapter, the amount of taxes assessed, collected, and returned delinquent, and such other matters as the board may require, to the end that it may have complete and statistical information as to the practical operation of this chapter. Every such officer mentioned in this section who shall wilfully neglect or refuse to furnish any report required by the commission for the purposes of this chapter, or who shall wilfully and unlawfully hinder, delay, or obstruct the commission in the discharge of its duties, shall forfeit and pay one hundred dollars for each offense, to be recovered in an action in the name of the state. A delay of ten days to make and furnish such report shall raise the presumption that the same was wilful.

7. They shall make diligent investigation and inquiry concerning the revenue laws and systems of other states and countries, so far as the same is made known by published reports and statistics and can be ascertained by correspondence with officers thereof, and, with the aid of information thus obtained, together with experience and observation of our own laws, shall recommend to the legislature at each regular session thereof such amendments, changes, or modifications of our revenue laws as seem proper and necessary to remedy injustice and irregularities in taxation and to facilitate the assessment and collection of public revenues.

8. They shall further report to the legislature at each regular session thereof, or at such other times as the legislature may direct, the whole amount of taxes collected in the state for all purposes, classified as to state, county, township, and municipal purposes, with the sources thereof; the amount lost, the cause of the loss, the proceedings of said board, and such other matters of information concerning the public revenues as it may deem of public interest.

9. They shall discharge such other duties as are or may be prescribed by law. Rev., s. 1124; 1917, c. 234, ss. 3, 12; 1919, c. 92, s. 3.

Action to compel performance of duty should be against commission as a body: *Shoe Co. v. Travis*, 168-599.

7884. Annual report to the governor. The board of state tax commissioners shall, on or before the first day of January of each year, make an annual report to the governor of the state, setting forth the workings of said commission during the preceding year and containing the findings and recommendations of said commission in relation to all matters of taxation. The state tax commission shall cause two thousand copies of this report to be printed on or before the first day of February succeeding the making of the report. One hundred copies of the report shall be placed at the disposal of the state librarian for distribution and exchange, and a copy shall be forwarded by the tax commission to each member of the general assembly as soon as printed.

Rev., s. 1127; 1917, c. 234, s. 4; 1919, c. 92, s. 4.

7885. Place of meeting; power of board. Regular sessions of the board shall be held at their office in the city of Raleigh. The board and the members thereof shall have access to all books, papers, documents, statements and accounts on file or of record in any of the departments of state. It shall have like access to all books, papers, documents, statements, and accounts on file or of record in counties, townships, and municipalities. The board shall have the right to subpœna witnesses, upon a subpœna signed by the chairman of the board, directed to such witnesses, which subpœna may be served by any person authorized to serve subpœnas from courts of record in this state; and the attendance of witnesses may be compelled by attachment, to be issued by any superior court upon proper showing that such witness has been properly subpœnaed and has refused to obey such subpœna. The person serving such subpœna shall receive the same compensation now allowed to sheriffs and other officers for serving subpœnas. The board shall have the power to examine witnesses under oath, such oath to be administered by any member of the board or by the secretary thereof. The board shall have the right to examine books, papers, or accounts of any corpora-

tion, firm, or individual owning property liable to assessment for taxes, general or specific, under the laws of this state; and any officer or stockholder of any such corporation, any member of any such firm, or any person or persons who shall refuse to permit such inspection, or neglect or fail to appear before the board in response to its subpoena, or testify, as provided for in this section, shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding one thousand dollars or by imprisonment in the state's prison for a period not exceeding two years, or both such fine and imprisonment, in the discretion of the court.

Rev., ss. 1122, 1123, 3792; 1917, c. 234, s. 7; 1919, c. 92, s. 7.

7886. Record of proceedings. The board of state tax commissioners shall keep an accurate record of its official proceedings. Certified copies of its records, attested with its official seal, shall be received in evidence in all courts of the state with like effect as certified copies of other public records.

1917, c. 234, s. 6; 1919, c. 92, s. 6.

7887. State board of equalization. The state board of tax commissioners shall constitute a state board of equalization of valuation and taxes for the state. In case it shall appear or be made to appear to the board that any tax list in any county in the state is grossly irregular, unlawfully or unequally assessed, it shall be the duty of the board to equalize the valuations of real property among the several counties in the manner prescribed in this article.

1917, c. 234, s. 8; 1919, c. 92, s. 8.

7888. Lands equalized. Lands shall be equalized by adding to the aggregate assessed value thereof, in every county in which the board may believe the valuation to be too low, such rate per centum as will raise the same to its proper proportionate value, and by deducting from the aggregate assessed value thereof, in every county in which the board may believe the valuation to be too high, such per centum as will reduce the same to its proper value. Town and city lots shall be equalized in the same manner herein provided for equalizing lands, and, at the option of the board, may be combined and equalized with lands.

1917, c. 234, s. 9; 1919, c. 92, s. 9.

7889. Power to revise county valuations. After the various tax lists required to be made under this subchapter shall have been passed upon by the county board of equalization, the state board of tax commissioners or any member thereof shall have power to reconvene said board and to make such orders as the tax commissioners shall determine are just and necessary, and to direct and order such county boards of equalization to raise or lower the valuation of the property, real or personal, in any county, township, or city, and to raise or lower the valuation of property of any person, company, or corporation; and to order and direct any county board of equalization or board of county commissioners to raise or lower the valuation of any class or classes of property; and generally to perform and do any act or to make any order or direction to any county board of equalization, board of county commissioners, or any county or township assessor as to the valuation of any property or any class of property in any township, city, or county, which in the judgment of the tax commission may seem just and necessary, to the end that all property shall be valued and assessed in the same

manner and to the same extent as any and all other property, real or personal, required to be listed for taxation. The tax commission or any member thereof is authorized to require county assessors to carefully place upon the assessment rolls, for taxation as provided by law, omitted property which may be discovered to have for any reason escaped assessment and taxation in previous years.

The board of state tax commissioners are authorized to require the county assessors or clerk of the board of county commissioners of each county in the state to file with them, when called for, complete abstracts of all real and personal property in the county as equalized by the county board of equalization and itemized by townships. They are authorized to make such rules and regulations as they may deem proper to carry out effectually the purposes for which the board is constituted, and to make all rules and regulations not inconsistent with law as the board may deem necessary with respect to its own meetings, proceedings, notices, and hearings.

Rev., ss. 1125, 1125 (a), 1126; 1917, c. 234, s. 5; 1919, c. 92, s. 5.

7890. Results tabulated. When the board shall have separately considered the several classes of property as hereinbefore required, the results shall be combined into one table, and the same shall be examined, compared, and perfected in such manner as the board shall deem best to accomplish a just equalization of assessments throughout the state.

1917, c. 234, s. 10; 1919, c. 92, s. 10.

7891. Rates and amounts certified to counties. When the board shall have completed its equalization of assessments for any year, the clerk of the board shall certify the rate per centum or amount finally determined by the board to be added to or deducted from the assessed valuation of each class of property in the several counties; and it shall be the duty of the clerk of the board of county commissioners to extend the rates of addition or deduction as ordered by the state board of equalization.

1917, c. 234, s. 11; 1919, c. 92, s. 11.

7892. Any member may hear complaints. The board of state tax commissioners may direct that any member of the board shall hear complaints, and make examinations and investigations.

1917, c. 234, s. 12; 1919, c. 92, s. 12.

7893. Assistants employed; salaries. The corporation commission may employ such additional clerks, agents, or other help as in their judgment they may deem necessary to put into proper execution the provisions of this act. The persons so selected shall hold office during the pleasure of said board. The sum of twenty thousand dollars per annum, or so much thereof as may be necessary, is hereby appropriated for the payment of the services of such clerks, agents, or other help. The members of the board shall receive an annual salary each of five hundred dollars in addition to their salary as corporation commissioners, and shall devote their whole time to the discharge of the duties of their office; and the clerk of the commission shall receive three hundred dollars in addition to his other salary; and they shall also receive their necessary traveling expenses, including necessary postage, stationery, and printing, in the performance of their duties, to be audited and allowed by the state auditor and paid monthly by the state treasurer

out of the general fund. The state tax commission is hereby authorized to employ special assistants or counsel in the discovery and collection of all inheritance taxes that are overdue and unpaid, and whenever in the judgment of the commission the interests of the state will be conserved thereby, the compensation, not to exceed five per cent of the amounts of revenue collected, to be audited and allowed by the state auditor upon certificate of the state tax commission in the settlement of such taxes: Provided, that the commission of five per cent herein authorized for collection of inheritance taxes shall be limited to cases where actual settlement is pending on the tenth day of March, 1919.

Rev., s. 1121; 1917, c. 234, s. 13; 1919, c. 92, s. 13.

County assessor provided for, 1917, c. 234, s. 14.

ART. 5. ASSESSORS AND LIST-TAKERS

7894. Township list-takers and assessors. The board of commissioners of each county shall, on the first Monday in the month of April in each year, appoint one discreet freeholder in each township (or, in the discretion of the county commissioners of any county, they may appoint two), who shall have been a resident of the township for not less than twelve months, who shall be known as the township list-taker and assessor and who shall list and assess the real and personal property in said township for taxation: Provided, the board of commissioners may appoint an assistant list-taker and assessor for the purpose above mentioned for each ward in any city or town in their respective townships. The township list-taker and assessor shall devote such portion of time to the duties of the office as may be necessary from the first day of May to the thirtieth day of June.

Rev., ss. 5202, 5211; 1917, c. 234, s. 15; 1919, c. 92, s. 15.

7895. Oath of township list-taker and assessor. Before entering upon the discharge of the duties of his office the assistant assessor shall take and subscribe the following oath before the chairman of the board of county commissioners for his county or some officer qualified to administer oaths:

I, assistant assessor for township of county, do solemnly swear (or affirm) that I will discharge the duties devolving upon me as assistant assessor according to the laws in force governing said office: so help me, God.

And upon making his complete returns of his assessments, embracing an abstract of the taxable property of the township, to the county assessor, the assistant assessor shall annex the following affidavit, subscribed and sworn to before a justice of the peace, who shall certify the same:

I, the assistant assessor for township of county, make oath that the foregoing list contains, to the best of my knowledge and belief, all the real and personal property required by law to be assessed in said township, and that I have assessed every tract or parcel of land or other real and personal property at its true value in money, and have endeavored to do equal justice to the public and to the taxpayers concerned.

Any assessor making a false return shall be deemed guilty of a misdemeanor.

Rev., s. 5208; 1917, c. 234, s. 20; 1919, c. 92, s. 20.

7896. Beginning of assessment, and return of lists. The township list-taker and assessor shall begin work of assessment and listing on Tuesday after the first Monday in May of each year, and shall complete the same as early as practicable,

and shall return his list of assessments so made out for the year nineteen hundred and nineteen to the county assessor, and for other years to the clerk of the board of county commissioners. The assessment of real property, when made, shall be in force for four years, or until altered, as provided by this act, by reason of structural improvement, erection, or destruction.

1917, c. 234, s. 17; 1919, c. 92, s. 17.

7897. Duties of township list-takers and assessors. Each township list-taker and assessor shall advertise in five or more public places within the township not later than the twentieth day of April, notifying all taxpayers to return to him all real and personal property which each taxpayer shall own on the first day of May, and naming the times and places at which he will be present to receive tax lists, and returns shall be made to the list-taker during the month of May under the pains and penalties imposed by law. The township list-taker and assessor shall obtain from each taxpayer a full, complete, and detailed statement of each and every piece and kind of property, real, personal, and mixed, which the taxpayer shall own on the first day of May, together with, as near as possible, the true value in money of all such property owned by him, or which may be under his control as agent, guardian, administrator, or otherwise, and which should be listed for taxation; and it shall be the duty of the township list-taker and assessor to ascertain by visitation, investigation, or otherwise, the actual cash value in money of each piece or class of property in his township, and to list such property at its actual value for taxation. He is hereby authorized and empowered to administer oaths in all cases necessary to obtain full and correct information concerning any taxable real and personal property in his township.

Rev., ss. 5206, 5212; 1917, c. 234, s. 18; 1919, c. 92, s. 18.

7898. Compensation of list-takers and assessors. The board of county commissioners shall allow each list-taker and assessor such compensation as the board shall deem just and proper for each day actually engaged in the performance of his duties, not exceeding four dollars per day; but the board of commissioners may, if in their judgment deemed wise to do so, fix the compensation on the basis of the number of tax lists taken, not to exceed fifteen cents per name.

Rev., s. 5209; 1917, c. 234, s. 15; 1919, c. 92, s. 15.

7899. Accounts must be itemized and verified. Township list-takers and assessors shall make out their account in detail, giving the date of each day when they shall have been employed, which account they shall verify under oath. They shall not be entitled to compensation until they shall have filed lists, schedules, statements, and books appertaining to assessment of property for such year with the county assessor (for the clerk of the board of county commissioners), the books to be accurately made up, showing correct total values for each class of property, average value per unit and aggregate value of all property in the township. The list-takers and assessors shall not be entitled to pay unless they have performed the labor and made return in strict compliance with the law. The county commissioners shall be the judge of the number of days actually necessary for taking the lists, and may regulate the same when a greater number of days is charged for than they deem necessary.

Rev., s. 5210; 1917, c. 234, s. 27; 1919, c. 92, s. 27.

ART. 6. ASSESSMENT AND LISTING OF PROPERTY

Part 1. General Provisions

7900. Terms defined. The words and phrases following, whenever used in this chapter, shall be construed to include in their meaning the definitions set opposite the same in this section, whenever it shall be necessary to the proper construction of this chapter:

1. Bank, banker, broker, stock-jobber—whoever has money employed in the business of dealing in coin, notes, or bills of exchange, or in any business of dealing or in buying or selling any kind of bills of exchange, checks, drafts, bank-notes, promissory notes, bonds, warrants, or other writing obligatory, or stocks of any kind or description whatsoever, or receiving money on deposit.

2. Collector or collectors—county, township, and deputy collectors, including sheriffs.

3. List-takers and assessors—have all authority conferred upon list-takers in this chapter.

4. Credits—every claim or demand for money, labor, interest or valuable things due or to become due, including money on deposit.

5. He—male, female, company, corporation, firm, society, singular or plural number.

6. Real property, real estate, land, tract, lot—not only the land itself, whether laid out in town or city lots or otherwise, with all things therein, but also all buildings, structures, and improvements and other permanent fixtures of whatever kind thereon, and all rights and privileges belonging or in any wise appertaining thereto, except where the same may be otherwise denominated by this chapter.

7. Shares of stock, shares of capital stock—the shares into which the capital stock of every incorporated company or association may be divided.

8. Tax, taxes—any taxes, special assessments or costs, interest or penalty imposed upon property.

Rev., s. 5259; 1917, c. 234, s. 96; 1919, c. 92, s. 96.

7901. What property exempt. The following real estate, and no other, shall be exempt from taxation, state and local:

1. Real estate, directly or indirectly owned by the United States or this state, however held, and real estate lawfully owned and held by counties, cities, towns, or school districts, used wholly and exclusively for public and school purposes, and all property used exclusively for educational purposes.

2. Such property as may be set apart for graveyards or burial lots, except such as is held for the purpose of speculating in the sale thereof.

3. Buildings, with the land they actually occupy, lawfully owned and held by churches or religious bodies and wholly and exclusively used for religious worship or for the residence of the minister of any such church or religious body, together with the additional adjacent land reasonably necessary for the convenient use of any such buildings. The occasional leasing of such buildings for schools, public lectures, or concerts, or the leasing of such parsonages, shall not

render them liable to taxation; also buildings and land upon which is situate, lawfully owned and held by churches or religious bodies, when secured through gift by will, and when the income from said property is used exclusively for religious, charitable or benevolent purposes, and when said income does not exceed twenty-five hundred dollars annually.

4. Buildings, with the land they actually occupy, wholly devoted to educational purposes, belonging to and actually and exclusively occupied and used by churches, public libraries, incorporated colleges, academies, industrial schools, seminaries, or other corporate institutions of learning, together with such additional adjacent land owned by such churches, libraries, and educational institutions as may be reasonably necessary for the convenient use of such buildings respectively; and also the buildings thereon used as residences by the officers or instructors of such educational institutions.

5. Real estate belonging to and actually and exclusively occupied and used by young men's christian associations and other similar religious associations, orphan or other asylums, reformatories, hospitals, and nunneries, which are not conducted for profit, but purely and completely as charities.

6. Buildings, with the land they actually occupy, belonging to any benevolent or charitable association and used exclusively for lodge purposes or meeting rooms by such association, together with such additional adjacent land as may be necessary for the convenient use of the buildings for such purposes; and also the proceeds and profits arising from rents, leases, etc., or rooms in said buildings, whether occupied for lodge and meeting purposes or not, when such rents, proceeds, and profits are used for charitable and benevolent purposes.

7. The property of indians who are not citizens, except lands held by them by purchase.

The following personal property, and no other, shall be exempt from taxation, state and local:

1. Property directly or indirectly owned by the state, however held; by the United States, however held; and property lawfully owned and held by the counties, cities, towns, or school districts, used wholly and exclusively for county, city, town, or public school purposes.

2. The furniture and furnishings of buildings lawfully owned and held by churches or religious bodies and wholly and exclusively used for religious worship or for the residence of the ministers of any such church or religious body, or such ministers' private libraries, and also the private libraries of the teachers in the public free schools of the state.

3. The furniture, furnishings, books and instruments contained in buildings wholly devoted to educational purposes, belonging to and actually and exclusively used by churches, public libraries, incorporated colleges, academies, industrial schools, seminaries, or other incorporated institutions.

4. Personal property, including endowment funds, belonging to young men's christian associations and other similar religious associations, orphan or other asylums, reformatories, hospitals and nunneries, which are not conducted for profit, but purely and completely as charities.

5. The furniture and furnishings of buildings and other property belonging to any benevolent or charitable association and used for lodge purposes and

meeting rooms by said association, or when such property or the proceeds of same is used for charitable or benevolent purposes.

6. Wearing apparel, private libraries, kitchen and other household furniture, not exceeding in value twenty-five dollars, and also growing crops.

Rev., s. 5223; 1917, c. 234, s. 72; 1919, c. 92, s. 72.

The revaluation act, 1919, chap. 84, sec. 24, makes the exemption from taxation in certain personal property, not to exceed \$300, instead of \$25, as given in subsection 6 of the above section, from and after the year 1919.

See section 7768. Power of taxation being essential to the life of government, exemptions therefrom are regarded as in derogation of sovereign authority and common right, and will never be presumed: *Railroad v. Alsbrook*, 110-137.

The grant of an exemption from taxation must be expressed by words too plain to be mistaken; if a doubt arise as to the intent of the legislature, that doubt must be resolved in favor of state: *Railroad v. Alsbrook*, 110-137—and such exemption, to be good, must be based upon some consideration or equivalent therefor, moving to the state: *Ibid*.

The consolidation of a railroad not exempt from taxation with one which is exempt does not extend the exemption to the property of the former, in the absence of clear, unmistakable provisions to that effect in the law authorizing the consolidation: *Ibid*.

In an exemption from taxation of property set apart and exclusively used for religious, charitable or educational purposes, only such property was meant as was used directly, immediately and solely for the purpose named, and hence property rented out was not exempt, though rents, so applied, were: *United Brethren v. Comrs.*, 115-489.

The constitutional provision as to exempting property held for charitable purposes, etc., being in the disjunctive, the legislature can exempt the property up to a certain value, and tax all above it, and may also tax property held for one of the purposes named and exempt that held for others: *Ibid*.

Where charter vests corporate property in the stockholders, and exempts it from taxation, the individual stock is also exempt: *Worth v. R. R.*, 89-301.

A tract of eighty acres, chiefly in forest, lying near a town, held by a religious society, on one side of which is situated a schoolhouse, is not exempt from taxation, except such part of it as is necessary for the school: *United Brethren v. Comrs.*, 115-489.

A town residence belonging to a religious society, not needed or used for a church, parsonage, school or hospital, but rented out, is not exempt from taxation; otherwise as to the rental applied to religious, educational or charitable purposes: *Ibid*.

A parcel of land of twenty acres, lying within the corporate limits of a town and belonging to a religious society, and on one part of which is a church, situated on a lot fenced in, of about two acres, the same being held for sale, excepting the church lot, is not, other than the church lot, exempt from taxation: *Ibid*.

Solvent credits held by a religious society, the income from which is applied exclusively and faithfully to educational, religious and charitable purposes, are exempt from taxation under acts of 1893, but any part of the fund on which the interest is not so applied, but is allowed to accumulate, is not exempt: *Ibid*.

The exemption does not include property owned by a private corporation, although it may have some of the governmental powers of a municipal corporation: *Southern Assembly v. Palmer*, 166-75.

The exemption includes all property used exclusively for educational purposes, and the test is the use to which it is devoted rather than the manner in which the title is held: *Corp. Com. v. Construction Co.*, 160-582.

Drainage district bonds are not exempt: *Comrs. v. Webb*, 160-594. Municipal bonds not exempt, see section 2682.

Land which owner has contracted to sell to United States is not exempt until the title passes: *Land Co. v. Comrs.*, 174-634.

7902. Poll tax exemption. The boards of commissioners of the several counties shall have power to exempt any person from the payment of poll tax on account of poverty and infirmity; and when any such person has been once exempted he shall not be required to renew his application unless the commissioners shall

revoke the exemption. When such exemption shall have been made, the clerk of the commissioners shall furnish the person with a certificate of such action, and the person to whom it was issued shall be required to list his poll, but upon exhibition of such certificate the list-taker shall annually enter in the column intended for the poll the word "Exempt," and the poll shall not be charged in computing the list.

Rev., s. 5201; 1917, c. 234, s. 41, 1919, c. 92, s. 41.

7903. Forms for assessing and listing. The state tax commission shall prepare forms to be used in assessing and listing property for taxation by assessors and list-takers. It shall transmit said forms to the clerk of the board of commissioners of each county by the fifteenth day of April, and the clerks shall deliver to each board of list-takers and assessors the necessary number of forms for their respective use. The assessors' forms shall be furnished every fourth year and the list-takers' forms annually.

Rev., s. 5215; 1917, c. 234, s. 73; 1919, c. 92, s. 73.

Part 2. Valuation of Property

7904. Real property valued. Real property shall be valued by the township list-taker and assessor, either from actual view or from the best information that the township list-taker and assessor can practically obtain, according to its true value in money. In determining the value the township list-taker and assessor shall consider as to each piece its advantage of location, quality of soil, quantity of standing timber, water privileges, water-power, mines, minerals, quarries, or other valuable deposits known to be available therein, and their value.

Rev., s. 5203; 1917, c. 234, s. 21; 1919, c. 92, s. 21.

The tax list showing assessed valuation of land is not competent evidence to show value in an action for damages: *Hamilton v. R. R.*, 150-193.

7905. Personal property valued. All articles of personal property shall, as far as practicable, be valued by the list-takers and assessors according to their true value in money; and after arriving at the total valuation of all articles of personal property which he shall be able to discover as belonging to any person, if he or they have sufficient evidence upon which to form a belief that such person has other personal property, consisting of money, credits, debts due or to become due, or any other thing of value liable to taxation, he, they or the board of commissioners shall have power to take such action as may be necessary to get said property on the tax lists.

Rev., s. 5204; 1917, c. 234, s. 22; 1919, c. 92, s. 22.

7906. Actual value defined. The intent and purpose of the tax laws of this state is to have all property and subjects of taxation assessed at their true and actual value in money in such manner as such property and subjects are usually sold, but not by forced sale thereof, and the words "market value" or "true value," whenever used in the tax laws, shall be held and deemed to mean what the property and subjects would bring at cash sale when sold in such manner as such property and subjects are usually sold.

Rev., s. 5205; 1917, c. 234, s. 23; 1919, c. 92, s. 23.

7907. Listing in years when no assessment. Except in the year when there shall be an assessment of real property, the township list-taker and assessor shall list the lands in his township at the valuation previously assessed on the same, and shall list and assess all personal property in said township. Such township list-taker and assessor shall correct any parcel of real property on which any structure of over one hundred dollars value may have been erected or improved in excess of the value of one hundred dollars or on which any structure of the like value shall have been destroyed, agreeably to the returns made in accordance with the provisions of this chapter.

Rev., s. 5211; 1917, c. 234, s. 28; 1919, c. 92, s. 28.

7908. Apportionment of valuation on division. In case within the interval between the regular periods of the valuation of lands or real property any piece of land or real property shall become divided in ownership, either by partition or sale of a portion thereof or otherwise, either of the part owners may, at any time, upon five days notice to the other part owner, apply to the board of commissioners for an apportionment of valuation. The board of commissioners shall allow such amendment to the tax duplicate as they may think just, and the person who has in custody the tax duplicates shall amend the same according to the assessment of the board of commissioners on the production of a certified copy of their proceedings ordering the change: Provided, that no amendment made after a tax has become due shall operate to affect that tax.

Rev., s. 5229; 1917, c. 234, s. 87; 1919, c. 92, s. 87.

Part 3. Listing of Property

7909. List filed by owner. Every person owning property is required to list and shall make out, sign, and deliver to the list-taker a statement, verified by his oath, of all the real and personal property, moneys, credits, investments in bonds, stocks, joint-stock companies, annuities, or otherwise, and the value of improvements on real estate since same was assessed, in his possession or under his control on the first day of May, either as owner or holder thereof, or as parent, guardian, trustee, executor, administrator, receiver, accounting officer, partner, agent, factor, or otherwise.

Provided, that whenever personal property has been conveyed in trust and the trustee resides out of the state, but the trustor resides within the state, then and in that case such property shall be listed for taxation in this state by the trustor where the property is situated. In all cases where a guardian, executor, or administrator resides in a city or incorporated town, all personal property in the hands of such guardian, executor, or administrator shall be listed for taxation only where their wards resided on the first day of May and where the deceased persons resided on the date of their death, unless such wards or deceased persons were nonresidents of the state on the first day of May or at the day of death, in which case the guardian, executor, or administrator shall list the property where he resides on the first day of May: Provided further, that when personal property is held in trust for another by any person, firm, or corporation in this state, whether as guardian, trustee, or otherwise, and the cestui que trust is a resident of the state, then the same shall be listed for taxation in the county and township where the cestui que trust lived on the first day of May; and if the cestui que

trust lived in a county in the state other than the county of the trustee, guardian, or other person so holding such property, then the property so held in trust may be listed for taxation by forwarding a list thereof, verified by oath, to the register of deeds of the county wherein the cestui que trust lived on the first day of May, and such register shall enter the same on the tax lists of the township in which the cestui que trust lived; and banks listing their stocks held in trust shall give the county in which the cestui que trust lives and shall forward to the register of deeds of that county the names of cestuis que trustent living therein, with the number of shares held by each, and their taxable value, to the end that they may be entered for school, county, and municipal taxation. The guardian shall be exempt from municipal taxation on the personal property of his ward when the ward resides outside of the corporate limits of the city or town.

Any person who, to evade the payment of taxes, surrenders or exchanges certificates of deposit in any bank in this state or elsewhere for nontaxpaying securities, or surrenders any taxable property for nontaxable property, and after the date of listing property has passed takes such certificate or other taxable property back and gives up the nontaxpaying securities or property, or executes any fictitious note or other evidence of debt for deduction from his solvent credits, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than fifty nor more than two hundred dollars (one-half of which shall go to the informer), or imprisoned not less than one month nor more than six months, or both.

Rev., s. 5217; 1917, c. 234, s. 30; 1919, c. 92, s. 30.

The manner of listing herein prescribed is to be followed, and the list-taker has no authority to enter property upon the tax lists which is not listed as provided by law: *Stone v. Phillips*, 176-457; *Rexford v. Phillips*, 159-213.

Personal property held in trust is to be listed where the cestui que trust lives, if he lives in the state; otherwise, where the trustee lives: *Smith v. Dunn*, 160-174. See, also, sections 7911, 7912.

Funds in the hands of the clerk of superior court, awaiting final disposition by the court, are subject to taxation: *Hyatt v. Walston*, 174-55.

"Capital stock" is a distinct subject of taxation from "shares of capital stock," former representing entire property, business, good will, etc., of the corporation and belongs to it, while latter belongs to individual stockholders and are taxable ad valorem like other property: *Comrs. v. Tobacco Co.*, 116-441.

Money deposited in banks loses its distinct character as money, and becomes a debt due to depositor from the bank, and as such is a proper subject for taxation: *Lilly v. Comrs.*, 69-300.

Solvent credits are property, and like other property are liable to taxation under our revenue law. Nor does it make any difference if such credits were derived from the trade of a merchant in the usual course of a business also taxed: *Lilly v. Comrs.*, 69-300.

7910. List filed by agent. The list shall be given by the person charged, during the months of May and June, as herein prescribed: Provided, that agents for the purpose of listing property may be appointed by females or nonresidents of the township where the property is situate, or by persons physically unable to attend and file their list at any time during the months of May and June: Provided, such persons shall be required to qualify by stating under oath that he knows the extent and has a knowledge of the true valuation of the property to be listed. The property of a corporation shall be given in by the president, cashier, treasurer, or other person appointed for that purpose.

Rev., s. 5218; 1917, c. 234, s. 31; 1919, c. 92, s. 31.

7911. Where real estate listed. All real property subject to taxation shall be listed in the township in which said property is situated on the first day of May. When the fee of the soil of any tract, parcel, or lot of land is in any person, and the right to any minerals, quarry, or timber therein is in another, the same shall be valued and listed agreeable to such ownership in separate entries specifying the interest listed, and shall be taxed to the parties owning the different interests respectively. In listing mineral, quarry, or timber interests the owner thereof shall describe the same in his list, together with the separate value of each separate tract or parcel of land in or on which the same shall be situated or located, and the list-taker shall be particular to enter the same on the tax list according to the returns. An owner of separate timber interests shall list the same, whether the timber shall be attached to or detached from the soil.

Rev., s. 5225; 1917, c. 234, s. 32; 1919, c. 92, s. 32.

Land should be listed for taxation in the name of individual owners, and not in name of the "estate" of one deceased: 89-251.

7912. Where polls and personalty listed; failure to list. All taxable polls and all personal property shall be listed in the township in which the person so charged resides on the first day of May, subject to the following exceptions:

1. Such shares of stock as are directed to be listed otherwise by this act.
2. All goods and chattels situated in some township, town, or city other than where the owner resides shall be listed in the township, town, or city where situated, and not elsewhere, if the owner or person having control thereof hires or occupies a store, mill, dockyard, piling ground, place for sale of property, shop, office, mine, farm, place of storage, manufactory, or warehouse therein for use in connection with such goods and chattels: Provided, that all farm products while owned by the raiser or producer shall be listed where raised, and that all manufactured goods consigned or stored out of the state shall be listed where the owner resides.

The residence of a person who has two or more places in which he occasionally dwells shall be that in which he dwells for the longest period of time during the year preceding the first day of May. The place where the principal office in this state is situated shall be deemed the residence of the corporation, but if there be no principal office in the state, then such property shall be listed and taxed at any place in the state where the corporation transacts business.

For purposes of assessing property and collecting taxes a copartnership shall be treated as an individual, and property shall be listed in the name of the firm. A copartnership shall be deemed to reside in the township, town, or city where its business is principally carried on. Each partner shall be liable for the whole tax. And any taxpayer who wilfully fails to list any personal property or poll liable to taxation in this state shall be guilty of a misdemeanor, and the failure to list shall be prima facie evidence that such failure was wilful.

Rev., s. 5226; 1917, c. 234, s. 33; 1919, c. 92, s. 33.

See section 7909. Property in stock of corporations does not follow and is not fixed by the situs of the residence of its owner, but is fixed by the legislature prescribing where and how it shall be listed and taxed, that is, at its principal place of business: *Wiley v. Comrs.*, 111-397.

Where a corporation or partnership has its place of business in one town with part of its personal property stored in another town, such property is only taxable in the town where its place of business is located: *Winston v. Salem*, 131-404.

Under the provisions of section 14, chapter 296, acts of 1893, it is the duty of the corporation, and not the individual stockholder, to list the stock for taxation and to pay the tax assessed thereon: *Loan Assn. v. Comrs.*, 115-410.

Personal property of a nonresident (here, notes secured by land) held by his agent in this state is subject to tax here. The legal fiction that it is deemed to follow the person of the owner has no application to questions of revenue: *Redmond v. Comrs.*, 87-122.

Nonresident holder of shares in a corporation in this state is not liable to tax here. Such property is beyond the jurisdiction of the state, and subject only to that in which holder has his domicile. The ruling in this case has no application to banking corporations formed and operated under the act of congress: *Railroad v. Comrs.*, 91-454.

As to where stock in banks must be listed and taxed, see section 7948.

Though generally personal property is taxable at the domicile of owner, legislature may, in the absence of constitutional restrictions, subject bank stock, money or solvent credits to taxation either at domicile of owner, the constructive situs, or at the place where property is actually situated: *Hall v. Fayetteville*, 115-281; *Buie v. Comrs.*, 79-267; *Wiley v. Comrs.*, 111-397.

7913. What the list must show. The list shall state all property of the taxpayer, and also the age of the party, if a male, with reference to his liability to a poll tax. The list shall also contain, as of the first day of May, (1) the quantity of land owned in the township, together with the kind and nature of any buildings erected thereon, and the land shall be described by name, if it has one; otherwise in a way that it may be identified, and each separate tract or parcel of land shall be separately listed and described; (2) manufacturing property outside of incorporated cities and towns; (3) the number of acres of mineral, timber, and quarry lands and lands susceptible of development for water-power; (4) the number of town lots; (5) the number and value of horses; (6) the number and value of mules; (7) the number and value of jacks and jennets; (8) the number and value of cattle; (9) the number and value of hogs; (10) the number and value of sheep; (11) the number and value of goats; (12) the number and value of dogs; (13) the value of farming utensils, including farm tools and machinery of all kinds; (14) the value of carriages, harness, buggies, wagons, carts, and other vehicles; (15) the value of warehouse fixtures and office furniture; (16) the value of tools of mechanics; (17) the value of household and kitchen furniture, musical instruments, provisions of all kinds, including grain and forage; firearms; (18) the value of libraries and scientific instruments; (19) the amount of money on hand; (20) the amount of credits, including accrued interest uncollected and owing to the party, whether by a person in or out of the state, whether owing by mortgage, bond, note, bill of exchange, certificate, check, open account, or due and payable, whether owing by any state or government, county, city, town, or township, individual, company, or corporation; the value of cotton, tobacco, or other property in the hands of commission merchants or agents in or out of the state. If any credit be not regarded as entirely solvent, it should be given in at its current or market value, and the party may deduct from the amount of his credits owing to him the amount of collectible debts owing by him as principal debtor; (21) money, investments, stocks and bonds and shares of stock in incorporated companies which are not taxed through the corporation itself; (22) automobiles, pleasure boats of any and all kinds; (23) the number and value of

seines, nets, fishing tackle, boats, barges, schooners, vessels, and all other floating property; (24) all other personal property whatever, including all cotton in seed or lint; tobacco, either in leaf or manufactured; turpentine, rosin, tar, brandy, whiskey, musical instruments, bicycles, goods, wares, and merchandise of all kinds; plated and silverware and all watches and jewelry possessed by the party or any minor child; (25) the income of the party for the twelve months next preceding the first day of May in the current year, if over one thousand two hundred and fifty dollars. If the party be a nonresident of the county and owns land therein, the list shall state his address, and may name an agent in the county to whom notice may be given respecting his taxes. If any person shall, with a view to evade the payment of taxes, fail or refuse to give in to the assessing officer any bonds, notes, claims, or other evidences of debt which are subject to assessment and taxation under this act, the same shall not be recoverable at law or suit in equity before any of the courts of this state until they have been listed and the tax paid thereon, together with any and all penalties prescribed by law for the nonpayment of taxes.

Rev., s. 5219; 1917, c. 234, s. 40; 1919, c. 92, s. 40.

Failure to list solvent credits does not prevent a recovery, but may postpone it until they are listed and the taxes are paid: *Martin v. Knight*, 147-564. Plaintiff may pay into court an amount sufficient to pay the taxes: *Corey v. Hooker*, 171-229; *Hyatt v. Holloman*, 168-386. Failure to list solvent credits for taxation must be set up in the answer as a defense: *Martin v. Knight*, 147-564.

Failure to list a note secured by chattel mortgage will not prevent a recovery of the property by the mortgagee: *Hyatt v. Holloman*, 168-386.

7914. Debts owing may be deducted. The taxpayer, upon making a return to the list-taker of his property subject to taxation under the provisions of the preceding section, shall file with the list-taker, on a blank to be prepared and furnished by the state tax commission, a statement of all the property of every kind and description owned by the taxpayer, and also a statement of his income subject to taxation under the laws of this state. All bona fide indebtedness owing by any person may be deducted by the list-taker from the amount of said person's credits, and insurance companies may deduct from solvent credits due to them an amount equal to their reinsurance reserve: Provided, that the state tax commission shall have the power, in their discretion, to summon any taxpayer to appear before any commissioner at some place within the county where the taxpayer resides and answer relative to the amount of solvent credits owned by him and the persons owing the same, as well as the nature of any indebtedness which has been deducted from solvent credits, and the name of the person to whom the indebtedness is due.

Rev., s. 5227; 1917, c. 234, s. 34; 1919, c. 92, s. 34.

7915. Trust property listed separately. Property held in trust as agent, guardian, executor, or administrator, or in the right of a feme covert, shall be returned on a separate list. The sheriff or other tax collector in any county shall be liable to suit on his official bond for failure to report any false return of property mentioned in this section which he may discover or which may be otherwise discovered and made known to him, and it shall be his duty to report such fraud to the grand jury of his county.

Rev., s. 5220; 1917, c. 234, s. 39; 1919, c. 92, s. 39.

7916. Oath by person making list. The list-taker and assessor shall require the owner, agent, guardian, personal representative, or other person having control of the property and listing such property to make and subscribe the following oath, which shall be attached to each and every schedule, to wit:

I do solemnly swear (or affirm) that the above and foregoing listed property is a full, true, and complete list of all and each kind of property owned by me or under my control as agent, guardian, personal representative, or otherwise, and that I have not neglected to list for taxation for the year all of each and every kind of property of which I am the owner or of which I have control as agent, guardian, personal representative, or otherwise, in the county of, state of North Carolina. That I have made full and true return of my income as required by law, and that I have not in any way connived at the violation or evasion of the requirements of law in relation to the assessment of property for taxation: so help me, God.

Rev., s. 5221; 1917, c. 234, s. 38; 1919, c. 92, s. 38.

7917. List-taker must administer oath; penalty. It shall be the duty of the list-takers and assessors of the several counties of the state, before receiving the returns of any taxpayer, to actually administer the oath required by law of taxpayers, the oath being read by the taxpayer in the presence of and in the hearing of the list-taker and assessor, or by the list-taker and assessor in the hearing and presence of the taxpayer; and for failure of said list-taker and assessor to so administer such oath, except in those cases where, by law, the oath may be made before some other person, such list-taker and assessor shall be guilty of a misdemeanor, and upon conviction shall be punished by imprisonment of not less than ten days nor more than six months, and in addition shall forfeit the sum of ten dollars for each such omission, one-half to go to the person furnishing information sufficient to convict, and one-half to the educational fund of the state, such amounts to be deducted from the compensation of such list-taker and assessor.

Rev., s. 5222; 1917, c. 234, s. 37; 1919, c. 92, s. 37.

7918. Penalty for false return. Any person, firm, or corporation in this state owning or holding personal property of any nature or description, individually or as agent, trustee, guardian, administrator, executor, assignee, or receiver, which property is subject to assessment, who shall intentionally make a false statement to the list-taker and assessor of his assessment district, or to the board of equalization thereof, for the purpose of avoiding the payment of the just and proportionate taxes thereon, shall forfeit the sum of ten dollars for every hundred dollars or major fraction thereof so withheld from the knowledge of such list-taker and assessor or board of equalization. It is hereby made the duty of the sheriff of any county, upon complaint made to him by any taxpayer of the assessment district in which it is alleged that property has been so withheld from the knowledge of the list-taker and assessor or board of equalization or not included in the said statement, to investigate the case forthwith and bring an action in the superior court in the name of the state against the person so complained of. All forfeitures collected under the provisions of this section shall be paid into the county treasury.

Rev., s. 5228; 1917, c. 234, s. 36; 1919, c. 92, s. 36.

7919. Refusal to answer questions or make returns. If any person liable to be charged with taxes shall wilfully refuse to answer any questions respecting his

property, or refuse to file, sign, and swear to his returns, he shall be guilty of a misdemeanor and, on conviction, liable to be punished by a fine not exceeding fifty dollars or imprisoned not exceeding thirty days, or both; and it shall be the duty of the assessors or list-taker to have the offender prosecuted, and the list-taker shall complete the list from the best information he can obtain. Every list-taker and chairman of the board of county commissioners shall have power to send for persons and papers and to examine witnesses and administer oaths.

Rev., s. 5230; 1917, c. 234, s. 71; 1919, c. 92, s. 71.

See *State v. Harrison*, 126-1049.

7920. Removing or concealing personal property. If any person whose duty it is to list personal property for taxation shall remove or conceal same, or cause same to be removed or concealed for the purpose of avoiding taxation, or shall fail to list same for taxation, he shall be guilty of a misdemeanor.

Rev., s. 5260; 1917, c. 234, s. 99; 1919, c. 92, s. 99.

7921. Returns by private banks and bankers. Every bank (not incorporated), banker, broker, or stock-jobber shall, at the time fixed by this chapter for listing personal property, make out and furnish the assessor a sworn statement showing: (1) The amount of property on hand and in transit; (2) the amount of funds in the hands of other banks, bankers or brokers and subject to draft; (3) the amount of checks or other cash items, the amount thereof not being included in either of the preceding items; (4) the amount of bills receivable, discounted, or purchased, and other credits due or to become due, including interest receivable and accrued, but not due, and interest due and unpaid; (5) the amount of bonds and stocks of every kind, state and county warrants, and other municipal securities and shares of capital stock or joint-stock of other companies or corporations held as an investment or any way representing assets; (6) all other property appertaining to their business other than real estate, which real estate shall be listed and assessed as other real estate is listed and assessed under this chapter; (7) the amount of deposits made with them by other parties; (8) the amount of all accounts payable other than current deposit accounts; (9) the amount of bonds and other securities exempt by law from taxation, specifying the amount and the kind of each, the same being included in preceding fifth item. The aggregate amount of the first, second, and third items in said statement shall be listed as moneys. The amount of sixth item shall be listed the same as other similar personal property is listed under this chapter. The aggregate amount of the seventh and eighth items shall be deducted from the aggregate amount of the fourth item of such statement, and the amount of the remainder, if any, shall be listed as credit. The aggregate amount of the ninth item shall be deducted by the tax-lister from the aggregate amount of the fifth item of such statement, and the remainder shall be listed as bonds or stocks.

Rev., s. 5268; 1917, c. 234, s. 69; 1919, c. 92, s. 69.

NOTE.—For banking corporations, see sec. 7948.

7922. Stock-brokers and private bankers must have license. No person, bank, or corporation shall, without a license authorized by law, act as a stock-broker or private banker. Any person, bank, or corporation that deals in coin, foreign

or domestic exchange, government stock, or other certificates of debt or shares in any corporation or chartered company, bank-notes, or other notes used as a currency, or sells the same or any of them on commission or for other compensation, or who negotiates loans upon real estate securities, shall be deemed to be a stock-broker. A stock-broker shall have the right to buy for profit or to sell on commission the coin, exchange, stocks, certificates of debt, shares in chartered companies, bank-notes, and notes used as currency as aforesaid, and may sell either privately or by auction, and also negotiate loans on real estate securities. Any person, bank, or corporation engaged in the business of receiving money on deposit, or in lending or advancing money, or in negotiating loans on any class of securities, or in discounting, buying, or selling negotiable or other paper or credits, commonly known as stock-brokers, whether in an office kept for the purpose or elsewhere, shall be deemed to be a private banker, and in the latter case the tax shall be paid for the additional privilege of private banking. Any person, bank, or corporation violating this section shall pay a fine of not less than one hundred dollars nor more than five thousand dollars for each offense.

Rev., s. 5269; 1917, c. 234, s. 70; 1919, c. 92, s. 70.

7923. Commissioners insert omitted property. The chairman of the board of commissioners shall examine the tax list from each township for the previous year and insert in the list the description and valuation of all property not given in, and shall charge all such persons with twenty-five per centum in addition to the tax with which they would otherwise be chargeable, unless satisfactory excuse therefor be rendered to the board of commissioners on or before the first Monday in October; and all persons who own property and wilfully fail to list it within the time allowed before the list-taker or board of commissioners shall be guilty of a misdemeanor, and the failure to list shall be prima facie evidence that such failure was wilful, and it shall be the duty of the board of commissioners to present to the grand jury the names of all such persons. The list-taker and assessor shall report to the board of commissioners any change he may make to the tax list as to real estate, and the said board shall note such change in a book to be kept for that purpose. It shall be the duty of the commissioners of each county to employ a competent man, whose duty it shall be to spend such time as the commissioners may deem necessary to make diligent search for property not listed for taxes and to put such property on the tax books: Provided, the cost of listing such unlisted property shall not exceed ten per cent of the revenue so derived, the expense to be divided pro rata between the state and county: Provided further, that nothing in this section shall be construed as authorizing or empowering the county commissioners to appoint tax collectors.

Rev., s. 5233; 1917, c. 234, s. 82; 1919, c. 92, s. 82.

The list-taker is not authorized to list property under this section: *Rexford v. Phillips*, 159-213; *Stone v. Phillips*, 176-457.

7924. Commissioners enter property escaping taxation. In all cases where the board of commissioners shall have omitted, or in any future year shall omit to enter upon the duplicate of their county any land or town lots situated within their county subject to taxation, it shall be their duty when they enter the same on duplicate the next succeeding year to add to the taxes of the current year the simple taxes of each and every preceding year in which such land or town lots

shall so have escaped taxation, with twenty-five per centum in addition thereto, so far back as the said lands have escaped taxation; and the state tax commission shall have like power to list unlisted railroad property. When no assessment has been made for the years in which said property has so escaped taxation, the board of commissioners shall be authorized to value and assess the same for those years: Provided, this shall not apply beyond five years. In all cases where any personal property, chose in action, or any property, except land liable to taxation, shall have been omitted, or shall be omitted in any future year, from the tax list by the owner or person required by law to list the same, the board of commissioners shall enter the same on the duplicate of the next succeeding year, and shall add to the taxes of the current year the simple taxes of such preceding year, not exceeding five years, with twenty-five per centum added thereto, in which such personal property as aforesaid shall so have escaped taxation, and the board of commissioners shall value and assess the personal property aforesaid for those years, and are empowered to examine witnesses and to call for papers to determine the value and to ascertain the persons liable for the tax upon such personal property. The provisions of this section shall extend and apply to all cities, towns, and like municipal corporations having the powers under their charters to tax the property aforesaid, and the powers and duties herein imposed upon the board of commissioners of the county shall be exercised and performed by the board of commissioners or the board of aldermen, as the case may be, of the city or town or other municipal corporation.

Rev., s. 5232; 1917, c. 234, s. 81; 1919, c. 92, s. 81.

Although the machinery act, providing for the assessment of taxes on unlisted personal property, omits to provide that notice shall be given to owner that he may have opportunity to be heard before the tribunal having power to make the assessment, owner is entitled to such notice, art. 1, sec. 17, of the constitution prohibiting the taking of property without due process of law: *Lumber Co. v. Smith*, 146-199.

This power is extended to municipal corporations: *Guano Co. v. New Bern*, 172-258; *Smith v. Dunn*, 160-174.

Power of county commissioners to place property on the tax books or to revise valuation is a special power to be exercised only at the times designated: *Wolfenden v. Comrs.*, 152-83.

7925. Discovering property not listed. It shall be the duty of the county commissioners and the several list-takers to be constantly looking out for property which has not been listed for taxation, and when discovered such property shall be duly placed upon the assessment list and properly assessed for taxation. At any time before or after the tax list has been turned over to the sheriff, as provided in this act, such property as may be so discovered, the list-taker shall make return thereof to the clerk of the board of county commissioners, who shall enter such property upon the tax books, make out a tax account, and place the same in the hands of the sheriff or tax collector and charge him with the same, and issue orders to the sheriff for collection thereof, and such orders shall have the force and effect of a judgment and execution against the real and personal property of the person charged with such list, as provided for the regular tax list.

1917, c. 234, s. 25; 1919, c. 92, s. 25.

7926. Mistakes in assessments. If on the assessment roll there is an error in the name of the person assessed, or any taxable property shall not be entered thereon,

the name may be changed or the property entered on the list by the assessors after the roll has been returned to the clerk of the board of commissioners, or such error may be corrected or the omission supplied by the board of commissioners upon satisfactory evidence of such error or omission, at a regular meeting of the board; and the board, upon reasonable notice, may make an order requiring the person affected to show cause at a day to be therein appointed why the error shall not be corrected or omission supplied, and, upon reasonable notice, his name and the property be entered on the tax list.

Rev., s. 5231; 1917, c. 234, s. 97; 1919, c. 92, s. 97.

ART. 7. REPORTS MADE BY TAX OFFICERS

7927. Time for lists to be completed and returned. The list-taker and assessor shall, on or before the third Monday in June, return the tax list to the county assessor in the year when there is a general assessment of property, and in other years to the register of deeds or to the auditor in counties where the tax lists are made out by such officer. He shall also return a list of taxable polls and property of the township not given in for taxation. The returns so made shall be open to the inspection of all persons interested, and the clerk shall give to any person desiring it a copy of so much thereof as relates to his property on paying a fee of ten cents.

Rev., s. 5214; 1917, c. 234, s. 74; 1919, c. 92, s. 74.

7928. Oath of list-taker to returns. The list-taker and assessor, upon making returns to the board of commissioners of the lists and statements, shall take and subscribe an oath to the effect following, which may be administered by the chairman of the board of commissioners or any officer authorized to administer oaths:

I,, list-taker and assessor of, in county of, do solemnly swear (or affirm) that the value of all real and personal property, moneys, credits, investments in bonds, stocks, joint-stock companies or otherwise, of which a statement has been made to me by the persons required by law to list the same, is truly returned as set forth in that statement; that in every case where by law I have been required to ascertain the items and value of the real and personal property, moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise, of any person, company, or corporation, I have diligently and by the best means in my power endeavored to ascertain the real value thereof, and that I verily believe a full list, with the value thereof estimated by the rules prescribed by law, is set forth in annexed returns; that in no case have I knowingly omitted to receive from any person, of whom by law I was required to receive, a statement of the description and value of real and personal property or of the amount of moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise, which he was required to list, or in any way connived at any violation or evasion of any of the requirements prescribed by law in relation to the listing or valuation of property, moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise, of any kind of taxation, and that I have returned to the board of commissioners the original returns made to me, or which I have made, or which by law I am required to procure and return.

Any list-taker and assessor making a false return, as aforesaid, shall be guilty of a misdemeanor.

Rev., s. 5213; 1917, c. 234, s. 75; 1919, c. 92, s. 75.

7929. List of exempt property furnished. Each list-taker and assessor shall, when making the assessment roll for his district, enter on the blanks so furnished to him in regular order the name of the owner if known, and, from the best information he can obtain, a correct description of all real and personal property then exempt from taxation in his town or assessment district, together with a statement of its value, for what purpose used, and the rent, if any, obtained therefor. The list of such exempt property when completed, on or before the first day of October, shall be delivered by the list-taker and assessor to the register of deeds, who, on or before the first day of November next thereafter, shall make duplicates thereof and transmit such duplicates to the state tax commission and file the original in his office.

Rev., s. 5224; 1917, c. 234, s. 76; 1919, c. 92, s. 76.

7930. Register of deeds to make duplicates; order to collect. The board of county commissioners shall cause the register of deeds to make out two copies of the tax list for each township, as revised and settled by the tax lister, according to a form to be furnished to them by the state tax commission. Such form shall show in different columns the sum due by each taxpayer to the state and to the county, and also in separate columns the amount of school poll tax levied by the general assembly and the county commissioners, and the total amount of property school tax levied by the general assembly and the county commissioners. The register of deeds or auditor shall also fill out receipts and stubs for all taxes charged on the tax books so made out, the receipts to be written in full except date and signature of collecting officer. Receipt books for this purpose shall be furnished by the county, on order of the register of deeds or auditor: Provided, this shall not be required in counties using carbon receipt books and cash book combined, but such may be used in lieu thereof. One of said copies shall remain in the office of the clerk of the board of commissioners; the other shall be delivered to the sheriff or tax collector on or before the first Monday in October in each year, and he shall receipt for the same. The clerk shall endorse on the copies given the sheriff an order to collect the taxes therein mentioned, and such order shall have the force and effect of a judgment and execution against the real and personal property of the person charged with such list. In such list the clerk shall note all appeals from the judgment of the board of commissioners which have been perfected by the giving of a bond. The order shall be in the following or similar form:

STATE OF NORTH CAROLINA, COUNTY.

OFFICE BOARD OF COMMISSIONERS COUNTY.

To the Sheriff of County:

You are hereby commanded to collect the taxes herein mentioned according to the provisions and requirements of the existing law.

In witness whereof, I hereunto set my hand and seal.....day of.....19...

.....

Clerk Board of Commissioners.

The board of commissioners shall make an order for the payment to the register of deeds or auditor, as the case may be, of such a sum as may be deemed a proper compensation for the work of computing the taxes and making out the tax list and the necessary copies thereof, including the making of such abstract and

returns as he may be required to furnish to the state tax commission and auditor; but the sum allowed for computing the taxes and making out the tax list shall not exceed five cents for each name appearing on the tax list, to be paid by the county treasurer out of the county funds.

Rev., s. 5238; 1917, c. 234, s. 83; 1919, c. 92, s. 83.

See *Fortune v. Comrs.*, 140-322.

7931. Register of deeds to report to auditor. The clerk of the board of commissioners shall, on or before the first Monday in November, after the lists are deposited with him by the board of commissioners, return to the state tax commission and auditor an abstract of the same, showing the number of acres of land and their value, and the value of town lots and the number of white and negro polls separately, and specify every other subject of taxation and the amount of state and county tax payable on each subject, and the amount payable on the whole. At the same time the clerk shall return to the state tax commission and auditor an abstract of the list of the poor, county and school taxes payable in his county, setting forth separately the tax levied on each poll and on each one hundred dollars value of real and personal property for each purpose, and also the gross amount of taxes of every kind levied for county purposes.

Rev., s. 5239; 1917, c. 234, s. 85; 1919, c. 92, s. 85.

7932. Penalty for failure to report. If any register of deeds shall make a default of any of the duties prescribed in the preceding section, or shall fail to deliver to the state auditor a copy of the sheriff's return of taxes received under schedules B and C of the revenue act in this chapter, and a copy of the settlement of state tax account between the board of commissioners and the sheriff or tax collector, made, sworn to and subscribed, he shall forfeit and pay to the state one thousand dollars, to be recovered against him and the sureties of his bond in the superior court of Wake county, before the clerk thereof, on motion of the state solicitor, and it shall be the duty of the state auditor to inform the solicitor of such default and at the same time furnish him with a certified copy of the official bond of said register of deeds. The clerk of the superior court shall transmit to the state auditor, on or before the second Monday in October in each year, a certified copy of the official bond of the register of deeds and his sureties, under the same penalties for default as are prescribed in this chapter. The register of deeds shall transmit to the state auditor annually a copy of the bond of the clerk of the superior court.

Rev., s. 5240; 1917, c. 234, s. 86; 1919, c. 92, s. 86.

7933. Clerks of cities and towns to report. The clerk of each city and town shall annually make out and transmit to the state tax commission, on blanks furnished by the said commission, a statement showing the assessed valuation of all property within his town or city and separately the amount of all taxes levied therein by said town or city, including school district, highway, street and sidewalk taxes for the current year, and the purpose for which the same were levied; also a complete and detailed statement of the bonded and other indebtedness of his town or city, and of the accrued interest, if any, remaining unpaid, and the purpose for which said indebtedness was incurred.

Rev., s. 5255; 1917, c. 234, s. 91; 1919, c. 92, s. 91.

7934. City and county indebtedness reported. Each register of deeds, city or town clerk, whenever required by the state tax commission, shall furnish a full and complete statement showing the bonded indebtedness and all other indebtedness of his respective county, city, or town, the purpose for which the same was incurred, and all accrued interest, if any, remaining unpaid.

Rev., s. 5256; 1917, c. 234, s. 92; 1919, c. 92, s. 92.

7935. Penalty for failure to perform duty. Every clerk of any town or city and every assessor who shall fail or neglect to perform any duty required of him by any of the provisions of this chapter shall, for every such neglect or failure, forfeit not less than twenty nor more than fifty dollars, and every clerk of the court and every register of deeds who shall fail or neglect to perform any duty required of him by this chapter shall, for every such failure, forfeit not less than twenty-five nor more than one hundred dollars, and it shall be the duty of the state tax commission to cause every such forfeiture to be collected.

Rev., s. 5257; 1917, c. 234, s. 93; 1919, c. 92, s. 93.

ART. 8. COUNTY BOARD OF EQUALIZATION

7936. County commissioners constitute the board. The board of county commissioners shall constitute the board of equalization in each county, and shall meet the second Monday in July in each year. The board shall equalize the valuation so that each tract or lot of land or articles of personal property shall be entered on the tax list at its true value in money, and for this purpose they shall observe the following rules; (1) They shall raise the valuation of such tracts or lots of real estate or articles of personal property, including stocks, bonds, and shares in all incorporated companies, except such as are specifically exempt by law, as in their opinion have been returned below their true value, to such price or sum as they may believe to be the true value thereof; (2) they shall reduce the valuation of such tracts and lots or articles of personal property as in their opinion have been returned above their true value, as compared with the average valuation of real and personal property, including stocks, bonds, and shares of all incorporated companies of such county. In regard to real property, they shall have due regard to the relative situation, quality of soil, improvements, natural and artificial advantages possessed by each tract or lot. The clerk of the board of county commissioners shall be clerk of the board of equalization, and shall within five days after adjournment of the board furnish the state tax commission with a copy of all proceedings of the county board of equalization with respect to any and all changes made by such board of valuations made and returned by the township list-takers and assessors. The clerk of the board shall also furnish the state tax commission within five days after adjournment of the county board of equalization, on blanks to be furnished by the commission, statement from the returns made by the township list-takers and assessors of aggregate value of real and personal property by townships and as a whole for the county and average value per unit of land acreage and of the several classes of live-stock.

Rev., s. 5234; 1917, c. 234, s. 26; 1919, c. 92, s. 26.

This power is to be exercised by the board of county commissioners as a board of equalization only at the times designated: *Wolfenden v. Comrs.*, 152-83. The board of equalization is to determine valuation for county and municipal taxation: *Guano Co. v. New Bern*, 172-258.

7937. Compensation of board. The members of the board of county commissioners shall be allowed, each as a member of the board of equalization, their usual compensation per diem for the number of days actually engaged in the performance of their duties, and in addition thereto mileage at the rate of five cents for each mile necessarily traveled in attending the meetings of the board of equalization. The per diem and mileage as provided in this section shall be paid by the county.

Rev., s. 5209; 1917, c. 234, ss. 15, 29; 1919, c. 92, ss. 15, 29.

7938. Equalization of values. The board of commissioners of each county, after notice in one newspaper or by poster put up, shall meet on the second Monday in July and revise the tax lists and valuations reported to them. And it shall be the duty of the register of deeds, without additional compensation, to complete the list by computing the tax payable by each person, affixing the same opposite his name. The board of commissioners shall sit for one day at least, and, when necessary, shall sit until the revision is completed, and shall hear all persons objecting to the valuation of their property. They shall have power to summon and examine witnesses, and shall correct the lists of the list-takers and assessors as may be right and just, and so that the valuation of similar property throughout the county shall be as near uniform as possible. They shall have power, after notifying the owner or agent, to raise the valuation of such property as they shall deem unreasonably low. The board of commissioners, on tendering the prescribed oath, may take the list of any person applying to list his taxables at any meeting of the commissioners held on or before the second Monday in July, upon his paying the clerk twenty-five cents for recording the same. The board of commissioners shall ascertain the valuation of his property by the examination of witnesses, or otherwise, and insert it in the abstract, and without satisfactory excuse they shall add to the tax of the person so allowed to give in five per centum on the regular amount of his tax for that year.

Rev., s. 5235; 1917, c. 234, s. 77; 1919, c. 92, s. 77.

In revising the tax lists the commissioners of a county *ex mero motu* at their August meeting increased the valuation put upon the property of a railroad company, and then caused notice to be served upon the company to appear at their September meeting and show cause why the same should not be fixed at the increased sum: Held, that the notice was sufficient and action of the board warranted in law: *Comrs. v. R. R.*, 86-541.

Due notice must be given the owner and a time for hearing fixed: *Wolfenden v. Comrs.*, 152-83. When the board has completed the revision, the powers cease until the next time designated in the statute: *Ibid.*

7939. Taxpayer may complain to board. If any person shall complain before the board of commissioners that his property, either real or personal, has been improperly valued, or that he is charged with an excessive tax, he may be required to present his claim in writing, and the board of commissioners shall hear any evidence adduced by him, and shall summon and examine any witnesses necessary for a just decision of the question, including the assessors or list-takers who made the valuation. If the board of commissioners shall find that he has cause for complaint they shall direct the clerk to render a true account thereof, and the account thus rendered, certified by the clerk, shall be transmitted to the

state tax commission, and if the same be approved by them they shall certify it to the state auditor, who shall credit the sheriff with the overcharge in his settlement for the year.

Rev., s. 5236; 1917, c. 234, s. 78; 1919, c. 92, s. 78.

The county commissioners have exclusive original jurisdiction to grant relief against excessive valuation of property for taxation; and from their decision, upon a petition for that purpose, there is no appeal, unless it appears from the facts found by them as to the valuation of property that they have proceeded upon some erroneous principle, for the reason that the statute gives no appeal: *Wade v. Comrs.*, 74-81.

The owner must apply to county commissioners, and not to municipal authorities, for relief from overvaluation of property: *Guano Co. v. New Bern*, 172-258.

7940. Commissioners give certificate of relief granted. If the application for relief be made to the board of commissioners after the sheriff shall have settled the accounts with the state and county, the board of commissioners shall carefully examine the case, and, if in their opinion the applicant is entitled to relief, shall direct the clerk to record on the record book the cause of complaint, the amount which in the opinion of the board of commissioners should be refunded to the applicant. The clerk shall make out a copy of such record, certify the same, under the seal of the board of commissioners, and deliver it to the applicant, who shall pay the clerk a fee of twenty-five cents. Such copy shall be transmitted to the state tax commission for their approval or disapproval. If the state tax commission shall approve the same, they shall issue an order to that effect, and it shall be the duty of the auditor of the state, upon receiving a certified copy thereof, to issue a warrant on the treasurer of the state for the amount of state tax specified. The treasurer shall, on presentation of such warrant, pay to the holder of the same the amount to be refunded.

Rev., s. 5237; 1917, c. 234, s. 79; 1919, c. 92, s. 79.

ART. 9. ASSESSMENTS BY STATE TAX COMMISSIONERS

Part 1. Private Corporations

7941. Reports from private corporations. 1. *What report contains.* Hereafter, except in the case of such corporations as are especially mentioned by name in other sections of this chapter and required to make statements in other forms, it shall be the duty of the president, chairman, or treasurer of every corporation having capital stock, every joint-stock association or limited partnership whatsoever, now or hereafter organized or incorporated by or under any law of this state, to make a report in writing to the state tax commission, on or before the first day of July of each year, stating specifically:

- a. Total authorized capital stock.
- b. Total authorized number of shares.
- c. Number of shares of stock issued.
- d. Par value of each share.
- e. Amount paid into the treasury on each share.
- f. Amount of capital stock paid in.
- g. Amount of capital on which dividend was declared.
- h. Date of each dividend during said year ending with the first day of May.
- i. Amount of each dividend during the year ending with the first Monday in said month.

j. Highest price of sales of stock between the first and fifteenth days of May; highest price of sales of stock during the year aforesaid; average price of sales of stock during the year.

2. *Appraise capital stock.* In said report one of the following named officers of such corporation, limited partnership, or joint-stock association, namely, the president, chairman, secretary or treasurer, after being duly sworn or affirmed to do and perform the same with fidelity and according to the best of his knowledge and belief, shall estimate and appraise the capital stock of said company at its actual value in cash on the first day of May, after deducting therefrom the assessed value of all real and personal estate upon which the corporation pays tax, and the value of the shares of stock legally held and owned by such corporation in other corporations incorporated in this state and paying taxes on its capital stock in this state, as indicated or measured by the amount of profit made, either declared in dividends or carried into surplus or sinking fund; and when the same shall have been so truly estimated and appraised they shall forthwith forward to the state tax commission a certificate thereof, accompanied by a copy of their said oath or affirmation, signed by them and attested by a magistrate or other person duly qualified to administer the same.

3. *Deductions made.* Every such corporation may also show a deduction from the total amount of its capital stock, surplus and undivided profits, the total amount of its actual investment in bonds of this state and of the United States and of the federal farm loan bank and bonds of the joint-stock land bank which have been held as a continuing investment by such corporation for a period of not less than three months prior to the day on which such report is required by law to be made, except the bonds of the "Victory" loan issue may be deducted if held and paid for not later than April twentieth, nineteen hundred and nineteen.

4. *Appraisal revised.* If the state tax commission or either of them is not satisfied with the appraisement and valuation so made and returned, they are hereby authorized and empowered to make a valuation thereof, based upon the facts contained in the report herein required or upon any information within their possession, and to settle an account on the valuation so made by them for taxes, penalties and interest due the state thereon, of which such settlement immediate notice shall be given to such corporation by said state tax commission, with the right to the company dissatisfied with any settlement so made against it to appeal to the superior court in term-time of the county in which such company has its principal place of business in this state, and thence to the supreme court of this state.

5. *Appeal allowed.* Before such company shall be allowed to exercise the right of appeal it shall, within twenty days after notice of such settlement, file with the state tax commission exceptions to the particulars to which it objects, and the grounds thereof, and the state tax commission shall hear the exceptions, after ten days notice of such hearing given by the state tax commission to the company; and if they shall overrule any of the exceptions, then such company, if it desires to appeal to the superior court, shall within ten days thereafter give notice to the state tax commission of such appeal to the superior court, and the state tax commission shall thereupon transmit to the superior court a record of such settlement,

with the exceptions of the company thereto, and all decisions thereon, and all papers and evidence considered in making the decision. The cause shall be placed on the civil docket of the superior court and shall have precedence of all other civil actions, and shall be tried under the same rules and regulations as are prescribed for the trial of other civil causes. The cause shall be entitled State of North Carolina on the relation of State Tax Commission against such company. Either party may appeal to the supreme court from the judgment of the superior court, under the same rules and regulations as are prescribed by law for other appeals, except that the state of North Carolina, if it shall appeal, shall not be required to give an undertaking or make any deposit to secure the costs of such appeal; and the supreme court may advance the cause on their docket so as to give the same a speedy hearing.

6. *Effect of failure to report.* In the event of the neglect or refusal of the officers of any corporation, company, joint-stock association, or limited partnership for a period of sixty days to make the report and appraisal to the state tax commission as herein provided, it shall be the duty of the state tax commission to estimate a valuation of the capital stock of such defaulting corporation, company, joint-stock association, or limited partnership, and settle an account for taxes, penalty, and interest thereon, from which settlement an appeal may be made to the superior court of the county in which the corporation has its principal place of business.

7. *General provisions.* Corporations, limited partnerships, or joint-stock associations liable to tax on capital stock shall not be required to make any report or pay any further state tax on the mortgages, bonds, other securities and credits owned by them in their own right. The state tax commission is forbidden to divulge or make public any report of a corporation required to be made to it by this section. The state tax commission shall prepare and keep a record book, upon which it shall enter a correct list of all the corporations and banks which it has assessed for taxation, and said record shall show the assessed valuation placed upon same by it.

Rev., s. 5270; 1917, c. 234, s. 43; 1919, c. 92, s. 43.

It is the assessed value of real and personal property in this state that must be deducted from the value of capital stock, and not the value of property both in and out of the state: *Comrs. v. Tob. Co.*, 116-441.

Imposition upon a corporation of a tax on its "capital stock" in addition to a requirement that it shall list for taxation and pay the taxes assessed on the shares of its stockholders, does not make "double taxation": *Ibid.*

Franchise, capital stock, property consisting in land and machinery, etc., shares of capital stock, and profits arising from the business of a corporation, are each the subject of distinct taxation: *Worth v. R. R.*, 89-301.

Notes due a corporation are to be considered in estimating the value of the capital stock, and not as separate items for taxation: *Land Co. v. Smith*, 151-70.

Method of estimating the value of the capital stock for taxation: *State v. Morrison*, 155-53. The amount invested in stock in another corporation will not be deducted: *Ibid.*

7942. **Officers and salaries reported.** 1. *By corporations.* In addition to the information required by the preceding section to be reported to the state tax commission by domestic corporations, all corporations, both domestic and foreign, doing business in this state and required by any section of the revenue and machinery acts to make report to the state tax commission shall also be

required to report to the state tax commission names and places of residence of all officers and employees of such corporation who were paid by such corporation salaries, wages or fees for the eight months ending January first, nineteen hundred and nineteen, in excess of six hundred and sixty-six dollars and sixty-six cents for unmarried persons and in excess of one thousand dollars for married persons and widows and widowers having minor child or children, and the total amount of such compensation for said period, and annually thereafter during the month of January for the preceding calendar year, the names of all officers and employees of such corporations who were paid by such corporations salaries, wages or fees in excess of one thousand dollars for unmarried persons and fifteen hundred dollars for married persons and widows or widowers having minor child or children, and the total amount of compensation. All such corporations shall be liable for penalties provided in section 7861 for failure to make report as required by this section.

2. *Reports from persons, firms, and companies not incorporated.* Every person, firm, or company not incorporated shall report to the state tax commission during the month of May the name and place of residence of any one in their employ who was paid salaries, wages, fees or commissions for the eight months ending January first, nineteen hundred and nineteen, in excess of six hundred and sixty-six dollars and sixty-six cents for unmarried persons and one thousand dollars for married persons and widows and widowers having minor child or children. Every person, firm or company not incorporated failing to comply with the provisions of this section shall be liable for the payment of the tax upon such income as they failed to report as required by this section.

3. *Reports from state auditor and state institutions.* The state auditor and the disbursing officer of every state institution or any agency receiving aid from the state government, and every department of the state government that pays salaries, wages, fees or commissions by any other means than by warrants issued by the state auditor, shall make report to state tax commission during the month of May for all such salaries, wages, fees or commissions paid for the eight months ending January first, nineteen hundred and nineteen, in excess of six hundred and sixty-six dollars and sixty-six cents for unmarried persons and one thousand dollars for married persons and widows or widowers having minor child or children; and annually thereafter in the month of January, for the preceding calendar year, the names of all persons who receive salaries, wages, fees or commissions in excess of one thousand dollars for unmarried persons and one thousand five hundred dollars for married persons and widows and widowers having minor child or children: Provided, that if the person, firm, company or corporation is without knowledge that the person to whom salaries, wages, fees or commissions have been paid is unmarried or married, and is unable to ascertain such fact in each case reported, the names of such persons who receive salaries, wages, fees or commissions in excess of the minimum exemption shall be reported.

4. *Investigation as to incomes.* It shall be the duty of the state tax commission to have its traveling auditors make diligent investigation if all parties liable for an income tax have listed the same, and it shall also be the duty of the state tax commission to have investigated the reports and records of the col-

lectors of internal revenue in this state, in so far as the same may be available under the act of congress, to the end that all parties liable for income tax in this state shall be duly charged therewith.

5. *Information not divulged.* The state tax commission is forbidden to divulge or make public the information required to be reported in this section, but it shall be the duty of the state tax commission to furnish the information so reported to the registers of deeds of the several counties of the state, whose duty it shall be to compute the income tax on all such incomes liable for income tax within their respective counties and charge the same upon the tax books.

1917, c. 234, s. 43(a); 1919, c. 92, s. 43(a).

7943. Foreign corporations not exempt. Nothing in this chapter shall be construed to exempt from taxation at its real value any property situate in this state belonging to any foreign corporation.

Rev., s. 5271; 1917, c. 234, s. 44; 1919, c. 92, s. 44.

A nonresident corporation is liable to taxation on such proportion of its capital as the value of its tangible property within the state bears to the value of all its tangible property: *Comrs. v. Steamship Co.*, 128-558.

7944. Tax on building and loan associations. The secretary of each building and loan association organized and conducting business in this state shall list with the local assessor any tangible real and personal property owned by such association on the first day of May, including cash on hand on that date. Every such association shall report to the state tax commission on May first the amount of such return to the list taker and shall also report the actual value of all shares of stock of such association, and shall deduct from the actual value of all shares the total loans made by such association. No other tax than the ad valorem tax herein provided for and the privilege tax under section 7837 shall be charged or levied on said association or on the shares therein.

Rev., 5272; 1917, c. 234, s. 45; 1919, c. 92, s. 45.

The capital stock of a building and loan association is property, and hence is taxable according to the uniform ad valorem system established by the constitution: *Loan Assn. v. Comrs.*, 115-410—and the fact that it pays a privilege tax does not exempt it from payment of ad valorem tax, *Ibid.*; see *Guano Co. v. Tarboro*, 126-68; *Cobb v. Comrs.*, 122-307; *Ins. Co. v. Stedman*, 130-221; see section 7837.

7945. Foreign building and loan associations. All foreign building and loan associations doing business in this state shall list for taxation with the state tax commission, through its agent, its stock held by citizens of this state in the county, city, or town where the owners of said stock reside. In listing such stock for taxation the withdrawal value as fixed by the by-laws of each company shall be furnished the list-taker, and the stock shall be valued for taxation as other money investments of citizens of this state. Any association or officer of such association doing business in this state who shall fail or refuse to so list shares owned by citizens of this state for taxation shall be barred from doing business in this state; and any local officer or person who shall collect dues, assessments, premiums, fines, or interest from any citizen of this state for any such association which has failed or refused to list for taxation the stock held by citizens of this state shall be guilty of a misdemeanor and subject to fine or imprisonment, or both, in the discretion of the court. All of such taxes shall be paid by the association listing said stock.

Rev., s. 5273; 1917, c. 234, s. 48; 1919, c. 92, s. 48.

7946. Valuation certified to register of deeds. The state tax commission shall, on or before September first, certify to the register of deeds of the county in which such corporation, joint-stock association, limited partnership, or company whatsoever has its principal office or place of business the total value of the stock of such corporation, joint-stock association, limited partnership, or company whatsoever, as assessed for state taxation. The corporation, joint-stock association, limited partnership, or company whatsoever shall pay the county, township, town, or city taxes upon the valuation so certified by the state tax commission.

Rev., s. 5274; 1917, c. 234, s. 46; 1919, c. 92, s. 46.

Section referred to in *Land Co. v. Smith*, 151-70.

7947. Penalty for failure to report. If the officers of any such limited partnership, joint-stock association, or corporation shall neglect or refuse to furnish the state tax commission, on or before the thirty-first day of July of each and every year, with the report and appraisement of capital stock as aforesaid, as required by section 7941, they shall be subject to a fine of fifty dollars, and it shall be the duty of the state tax commission to add five per centum to the tax of said limited partnership, joint-stock association, or corporation for each and every year for which said report and appraisement were not furnished, which percentage shall be settled and collected with the said tax in the usual manner of settling and collecting such taxes. If the officers of any such limited partnership, joint-stock association, or corporation, or any of them, shall intentionally fail to comply with section 7941 requiring a report and appraisal of capital stock for three successive years they shall be deemed guilty of a misdemeanor, and on conviction thereof shall be sentenced to pay a fine of five hundred dollars and undergo imprisonment not exceeding one year, or both, or either, at the discretion of the court.

Rev., s. 5275; 1917, c. 234, s. 47; 1919, c. 92, s. 47.

7948. Bank taxation. 1. *State tax paid to state treasurer.* The taxes imposed for state purposes upon the shares of stock in any bank, banking association, or savings institution (whether state or national) in this state shall be paid by the cashier of such bank, banking association, or savings institution, directly to the state treasurer, and upon failure to pay the state treasurer as aforesaid he shall institute an action against the bank, banking association, or savings institution to enforce the same in the county of Wake or in the county in which the bank, banking association, or savings institution is located, which action shall be prosecuted in the name of the state of North Carolina on the relation of the treasurer of the state, and which shall be tried at the return term of court: Provided, the complaint is filed ten days before the first day of such term, and shall have precedence over all other actions. The value of such shares shall be determined as is hereafter provided in this section.

2. *Real estate listed for taxation.* Every bank, banking association, or savings institution (whether state or national) shall list its real estate in the county, city, or town in which such real estate is located for the purposes of county and municipal taxation.

3. *Shares listed.* Every such bank, banking association, or savings institution shall, during the month of May, list annually with the state tax commission, in the name of and for its shareholders, all the shares of its capital stock, whether held by residents or nonresidents, at its market value on the first day of May, or, if it has no market value, then at its actual value on that day, from which market or actual value shall be deducted the assessed value of the real and personal property which such bank, banking association, or savings institution shall have listed for taxation in the county or counties wherein such real and personal estate is located.

4. *Value of shares.* The actual value of such shares, where such shares have no market value, shall be ascertained by adding together the capital stock, surplus, and undivided profits, and deducting therefrom the amount of real and personal property owned by said institution on which it pays tax and dividing the net amount by the number of shares in said institution. Insolvent debts due said institution may be deducted from the items of undivided profits or surplus, if itemized and sworn to, and forwarded to the state tax commission by the cashier of such institution, also accrued and unearned interest, unpaid taxes, an amount not exceeding five (5) per cent of the bills receivable of said institution to cover any other bad or insolvent debts, and also an amount equal to the true value of any shares of stock owned in other North Carolina banks or corporations upon which the tax is paid by the owner or the corporation issuing the same. There shall also be deducted investments by such banks in bonds of this state and of the United States government and of the federal farm loan bank and bonds of the joint-stock land bank not exceeding twenty-five per cent of the capital stock and surplus of such banks. To be entitled to this deduction it must be shown by the reports of such banks that the bonds were purchased and paid for in full at least ninety days before the first day of May, except that bona fide purchases of the current issue of "Victory" bonds may be deducted if paid for in full not later than the thirtieth day of April, nineteen hundred and nineteen. If the state tax commission shall have reason to believe that the market or actual value as given in is not its true value, it shall ascertain such true value by such examination and investigation as to it seems proper, and change the value as given in to such an amount as it ascertains the true value to be, which action on the part of the state tax commission may be reviewed by the superior court by an action brought against the state tax commission in its official capacity by the party aggrieved. But no action shall lie until all taxes admitted by such aggrieved party to be due shall have been paid or tendered.

5. *Tax on shares paid as other taxes.* The taxes so assessed upon the shares of any such bank, company or association shall be paid by the cashier, secretary, treasurer or proper accounting officer thereof, and in the same manner and at the same time as other taxes are required to be paid in such county, special school district or city; in default of such payment such cashier, secretary, treasurer or other accounting officer, as well as such bank, company or association, shall be liable for such taxes, and, in addition, for a sum equal to ten per centum thereof. Any taxes so paid upon any such shares may, with the interest thereon,

be recovered from the owners thereof by the bank, company, association or officer paying them, or may be deducted from the dividends accruing on such shares. The taxation of shares of any such bank, banking association, or savings institution shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of this state, whether such taxation is for state, county, school, or municipal purposes.

Rev., s. 5267; 1917, c. 234, s. 42; 1919, c. 92, s. 42; 1919, c. 93.

NOTE.—For private banks and bankers, see section 7921.

National bank stock is a proper subject of taxation, state, county or municipal: Kyle v. Comrs., 75-445.

Shares in national banks owned by residents of the state may be assessed for taxation either at the place where the owners reside or at the place where the bank is located, as the legislature of the state may elect: Buie v. Comrs., 79-267; Hall v. Fayetteville, 115-281; Wiley v. Comrs., 111-397.

Remarks of Smith, C. J., upon the right of the state to tax shares of stock in national banks, where there is no discrimination against such shares and in favor of other moneyed capital in the hands of individual citizens of the state: Lemly v. Comrs., 85-379.

In the taxation of shares of stock in a national bank, under the revenue act of 1885, the owner of such shares has the right to deduct from the assessed value thereof amount of his bona fide indebtedness, as in case of other investments of moneyed capital: McAden v. Comrs., 97-355.

All the bank stock is taxable at its value, less the assessed value of the bank's real and personal property; and so much of the surplus, over and above capital, as is invested in non-taxable state bonds, is exempt and must be deducted from the surplus in assessing the value of the stock: Pullen v. Corp. Com., 152-548.

Part 2. Public-service Corporations Other Than Railroads

7949. Telegraph companies. Every joint-stock association, company, copartnership or corporation, whether incorporated under the laws of this state or any other state, or of any foreign nation, engaged in transmitting to, from, through, in, or across the state of North Carolina telegraph messages, shall be deemed and held to be a telegraph company, and every such telegraph company shall, annually, between the first day of May and the twentieth day of May, make out and deliver to the state tax commission a statement, verified by oath of the officer or agent of such company making such statement, with reference to the thirtieth day of April next preceding, showing:

1. The total capital stock of such association, company, copartnership, or corporation.
2. The number of shares of capital stock issued and outstanding and the par value of each share.
3. Its principal place of business.
4. The market value of said shares of stock on the thirtieth day of April next preceding; and if such shares have no market value, then the actual value thereof.
5. The real estate, structures, machinery, fixtures, and appliances owned by said association, company, copartnership, or corporation, and subject to local taxation within the state, and the location and assessed value thereof in each county where the same is assessed for local taxation.
6. The specific real estate, together with the permanent improvements thereon, owned by such association, company, copartnership, or corporation, situated outside of the state of North Carolina and not directly used in the conduct of the

business, with a specific description of each such piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situated.

7. All mortgages upon the whole or any part of its property, together with the dates and amounts thereof.

8. (a) The total length of the lines of said association or company; (b) the total length of so much of their lines as is outside of the state of North Carolina; (c) length of the lines and wire mileage within each of the counties, townships and incorporated towns within the state of North Carolina.

Rev., s. 5276; 1917, c. 234, s. 49; 1919, c. 90, s. 49.

7950. Telephone companies. Every telephone company doing business in this state, whether incorporated under the laws of this state or any other state, or of any foreign nation, shall annually, between the first day of May and the twentieth day of May, make out and deliver to the state tax commission of this state a statement verified by the oath of the officer or agent of such company making such statement with reference to the thirtieth day of April next preceding, showing:

1. The total capital stock of such association, company, copartnership, or corporation invested in the operation of such telephone business.

2. The number of shares of capital stock issued and outstanding and the par or face value of each share.

3. Its principal place of business.

4. The market value of said shares of stock on the thirty-first day of March next preceding; and if such shares have no market value, then the actual value thereof.

5. The real estate, structures, machinery, fixtures, and appliances owned by said association, company, copartnership, or corporation and subject to local taxation within the state, and the location and assessed value thereof in each county where the same is assessed for local taxation.

6. The specific real estate, together with the permanent improvements thereon, owned by such association, company, copartnership, or corporation situated outside the state of North Carolina and not used directly in the conduct of the business, with a specific description of each such piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situated.

7. All mortgages upon the whole or any of its property, together with the dates and amounts thereof.

8. (a) The total length of the lines of said association or company; (b) the total length of so much of their lines as is outside the state of North Carolina; (c) the length of the lines and wire mileage within each of the counties, townships and incorporated towns within the state of North Carolina.

Rev., s. 5277; 1917, c. 234, s. 50; 1919, c. 92, s. 50.

7951. Express companies. Every joint-stock association, company, copartnership or corporation, incorporated or acting under the laws of this state or any other state or any foreign nation, engaged in carrying to, from, through, in, or across this state, or any part thereof, money, packages, gold, silver plate, mer-

chandise, freight, or other articles, under any contract, expressed or implied, with any railroad company or the managers, lessees, agents, or receivers thereof, provided such joint-stock association, company, copartnership, or corporation is not a railroad company, shall be deemed and held to be an express company within the meaning of this act, and every such express company shall, annually, between the first day of May and the twentieth day of May, make out and deliver to the state tax commission a statement verified by the oath of the officer or agent of such association, company, copartnership, or corporation making such statement, with reference to the thirtieth day of April next preceding, showing:

1. The total capital stock or capital of said association, copartnership, or corporation.

2. The number of shares of capital stock issued and outstanding and the par or face value of each share, and in case no shares of capital stock are issued, in what manner the capital stock thereof is divided and in what manner such holdings are evidenced.

3. Its principal place of business.

4. The market value of such shares of stock on the thirtieth day of April next preceding; and if such shares have no market value, then the actual value thereof; and in case no shares of stock have been issued, state the market value, or the actual value in case there is no market value, of the capital thereof, and the manner in which the same is divided.

5. The real estate, structures, machinery, fixtures, and appliances owned by such association, company, copartnership, or corporation and subject to local taxation within the state of North Carolina, and the location and assessed value thereof in each county where the same is assessed for local taxation.

6. The specific real estate, together with the improvements thereon, owned by the association, company, copartnership, or corporation situated outside the state of North Carolina and not used directly in the conduct of the business, with a specific description of each piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situated.

7. All mortgages upon the whole or any part of its property, together with the dates and amounts thereof.

8. (a) Total length of the line or routes over which such association, company, copartnership, or corporation transports such merchandise, freight, or express matter; (b) the total length of such lines or routes as are outside the state of North Carolina; (c) the length of such lines or routes within each of the counties or townships within the state of North Carolina.

Rev., s. 5278; 1917, c. 234, s. 51; 1919, c. 92, s. 51.

7952. Sleeping-car companies. 1. *Report made.* Every joint-stock association, company, copartnership, or corporation incorporated or acting under the laws of this or any other state or of any foreign nation, and conveying to, from, through, in, or across this state, or any part thereof, passengers or travelers in palace cars, drawing-room cars, sleeping cars, dining cars, or chair cars, under any contract, expressed or implied, with any railroad company or the managers, lessees, agents, or receivers thereof, shall be deemed and held to be a sleeping-car

company for the purposes of this chapter, and shall hereinafter be called "sleeping-car company"; and every such sleeping-car company doing business in this state shall, annually between the first day of May and the twentieth day of May, make out and deliver to the state tax commission a statement, verified by the oath of the officer or agent of such company making such statement, with reference to the thirtieth day of April next preceding, showing:

- a. The total capital stock of such sleeping-car company invested in its sleeping-car business.
- b. The number of shares of such capital stock devoted to the sleeping-car business issued and outstanding, and the par or face value of each share.
- c. Under the laws of what state it is incorporated.
- d. Its principal place of business.
- e. The names and postoffice addresses of its president and secretary.
- f. The actual cash value of the shares of such capital stock devoted to its sleeping-car business on the thirtieth day of April next preceding such report.
- g. The real estate, structures, machinery, fixtures, and appliances owned by such sleeping-car company and subject to local taxation within this state, and the location and assessed value thereof in each county within this state where the same is assessed for local taxation.
- h. All mortgages upon the whole or any part of its property, and the amounts thereof devoted to its sleeping-car business.
- i. (a) The total length of the main line of railroad over which cars are run; (b) the total length of so much of the main lines of railroad over which the cars are run outside of the state of North Carolina; (c) the length of the lines of railroad over which such cars are run within the state of North Carolina: Provided, that where the railroads over which such cars run have double tracks, or a greater number of tracks than a single track, the statement shall only give the mileage as though such tracks were but single tracks; and in case it shall be required, such statement shall show in detail the number of miles of each or any particular railroad or system within the state.

2. *State tax paid.* When the assessment shall have been made by the state tax commission in accordance with section 7957, the clerk of the commission shall thereupon notify by registered letter the officer attesting such report of the amount assessed against it, and such sleeping-car company shall have thirty days within which to appear and make objection, if any it shall have, to said assessment. If no objection be made within thirty days, the amount shall be credited to the state treasurer, who shall thereupon send by registered letter to the officer attesting such report a bill for the state taxes upon said assessment, and such sleeping-car company shall have thirty days within which to pay such taxes.

3. *County tax.* The clerk of the state tax commission shall certify to the county commissioners of the several counties through which such cars are used the value of the property of such sleeping-car company within such county in the proportion that the number of miles of railroad over which such cars are used in said county bears to the number of miles of railroad over which such cars are used within the state, together with the name and postoffice address of the officer attesting such report of such sleeping-car company, with the information that tax bills, when assessed, are to be sent him by mail; and such value, so certified, shall

be assessed and taxed the same as other property within said county. And when the assessment shall have been made in such county the sheriff or county tax collector shall send to the address given by the clerk of the state tax commission to the county commissioners by registered mail a bill for the total amount of all taxes due to such county, and such sheriff or county tax collector shall add to such tax bills the postage and registration fee, and such sleeping-car company shall have sixty days thereafter within which to pay such taxes; and upon failure of and refusal to do so, such taxes shall be collected the same as other delinquent taxes are, together with a penalty of fifty per cent added thereto, and costs of collection.

Rev., 5279; 1917, c. 234, s. 52; 1919, c. 92, s. 52.

7953. Refrigerator and freight-car companies. Every firm, person, or corporation owning refrigerator or freight cars operated over or leased to any railroad company in this state or operating in this state shall be taxed in the same manner as hereinbefore provided for the taxation of sleeping-car companies, and the collection of the tax thereon shall be followed in assessing and collecting the tax on the refrigerator and freight cars taxed under this section: Provided, if it appear that the owner does not lease the cars to any railroad company or make any contract to furnish it with cars, but they are furnished to be run indiscriminately over any lines on which shippers or railroad companies may desire to send them, and the owner receives compensation from each road over which the cars run, the state tax commission shall ascertain and assess the value of the average number of cars which are in use within the state as a part of the necessary equipment of any railroad company for the year ending April the thirtieth next preceding, and the tax shall be computed upon this assessment.

Rev., s. 5280; 1917, c. 234, s. 53; 1919, c. 92, s. 53.

7954. Street railways, waterworks, etc. Every street railway company, waterworks company, electric light and power company, gas company, ferry company, bridge company, canal company, and other corporations exercising the right of eminent domain shall, annually, between the first and the twentieth of May, make out and deliver to the state tax commission a statement, verified by the oath of the officer or agent of such company making such statement, with reference to the copartnership or corporation, showing:

1. The total capital stock of such association, company, copartnership, or corporation.
2. The number of shares of capital stock issued and outstanding and the par or face value of each share.
3. Its principal place of business.
4. The market value of such shares of stock on the thirty-first day of March next preceding, and if such shares have no market value, then the actual value thereof.
5. The real estate, structures, machinery, fixtures, and appliances owned by the association, company, copartnership, or corporation and subject to local taxation within the state, and the location and assessed value thereof in each county where the same is assessed for local taxation.
6. The specific real estate, together with the permanent improvements thereon, owned by such association, company, copartnership, or corporation situated out-

side of the state of North Carolina and not directly used in the conduct of the business, with a specific description of each such piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situated.

7. All mortgages upon the whole or any part of its property, together with the dates and amounts thereof.

8. (a) The total length of the lines of the association or company; (b) the total length of so much of their lines as is outside of the state of North Carolina; (c) the length of the lines within each of the counties and townships within the state of North Carolina.

Rev., s. 5281; 1917, c. 234, s. 54; 1919, c. 92, s. 54.

7955. Additional information required. Upon the filing of the statements required in the preceding sections the state tax commission shall examine them, and each of them, and if the commission shall deem the same insufficient or in case they shall deem that other information is requisite, they shall require such officer to make such other and further statements as the commission may call for. In case of the failure or refusal of any association, company, copartnership, or corporation to make out and deliver to the state tax commission any statement or statements required by this act, such association, company, copartnership or corporation shall forfeit and pay to the state of North Carolina one hundred dollars for each additional day such report is delayed beyond the twentieth day of May, to be sued for and recovered in any proper form of action in the name of the state of North Carolina on the relation of the state tax commission, and such penalty, when collected, shall be paid into the general fund of the state.

Rev., s. 5282; 1917, c. 234, s. 55; 1919, c. 92, s. 55.

7956. Commission shall examine statements. The state tax commission shall thereupon value and assess the property of each association, company, copartnership, or corporation in the manner hereinafter set forth, after examining such statements and after ascertaining the value of such properties therefrom, and upon such other information as they may have or obtain. For that purpose they may require the agents or officers of said association, company, copartnership, or corporation to appear before them with such books, papers, and statements as they may require, or they may require additional statements to be made to them, and may compel the attendance of witnesses in case they shall deem it necessary to enable them to ascertain the true cash value of such property.

Rev., s. 5283; 1917, c. 234, s. 56; 1919, c. 92, s. 56.

7957. Manner of assessment. 1. The state tax commission shall first ascertain the true cash value of the entire property owned by the association, company, copartnership, or corporation from the statements or otherwise for that purpose, taking the aggregate value of all the shares of capital stock, in case shares have a market value, and in case they have none, taking the actual value thereof or of the capital of the association, company, copartnership, or corporation in whatever manner the same is divided, in case no shares of capital stock have been issued: Provided, however, that in case the whole or any portion of the property of such association, company, copartnership, or corporation shall be encumbered by a

mortgage or mortgages, such board shall ascertain the true cash value of such property by adding to the market value of the aggregate shares of stock, or to the value of the capital in case there should be no such shares, the aggregate amounts of such mortgage or mortgages, and the result shall be deemed and treated as the true cash value of the property of such association, company, copartnership, or corporation.

2. The state tax commission shall, for the purpose of ascertaining the true cash value of property within the state of North Carolina, next ascertain from such statements or otherwise the assessed value for taxation, in the localities where the same is situated, of the several pieces of real estate situated within the state of North Carolina, and not specifically used in the general business of such associations, companies, copartnerships, or corporations, which assessed value for taxation shall be by the board deducted from the gross value of the property as above ascertained.

3. The state tax commission shall next ascertain and assess the true cash value of the property of the associations, companies, copartnerships, or corporations within the state of North Carolina by taking as a guide, as far as practicable, the proportion of the whole aggregate value of the associations, companies, copartnerships, or corporations as above ascertained, after deducting the assessed value of such real estate without the state which the length of lines of said associations, companies, copartnerships, or corporations, in the case of telegraph and telephone companies within the state of North Carolina, bears to the total length thereof, and in the case of express companies and sleeping-car companies the proportion shall be the proportion of the whole aggregate value, after such deduction, which the length of lines or routes within the state of North Carolina bears to the whole length of lines or routes of such associations, companies, copartnerships, or corporations, and such amount so ascertained shall be deemed and held as the entire value of the property of said associations, companies, copartnerships, or corporations within the state of North Carolina.

4. The state tax commissioners shall also assess the value for taxation of all real estate, structures, machinery, and appliances of telegraph companies within the state subject to local taxation, and this assessment, together with the franchise value, shall be certified by the commission to the counties and municipalities where located on basis of wire mileage in such county or town in which such property is situated.

5. From the entire value of the property within the state so ascertained there shall be deducted by the commissioners the assessed value for taxation of all real estate, structures, machinery, and appliances within the state and subject to local taxation in the counties as hereinbefore described in sections 7950 to 7956, and the residue of such value so ascertained, after deducting therefrom the assessed value of such local properties, shall be by the board assessed to the association.

Rev., s. 5284; 1917, c. 234, s. 57; 1919, c. 92, s. 57.

7958. Value per mile ascertained. The state tax commission shall thereupon ascertain the value per mile of the property within the state by dividing the total value, as above ascertained, after deducting the specific properties locally assessed within the state by the number of miles within the state, and the result shall be

deemed and held as value per mile of the property of such association, company, copartnership, or corporation within the state of North Carolina: Provided, the value per mile of telephone companies shall be determined on a wire mileage basis.

Rev., s. 5285; 1917, c. 234, s. 58; 1919, c. 92, s. 58.

7959. Total value for each county. The state tax commission shall thereupon, for the purpose of determining what amount shall be assessed by it to the association, company, copartnership, or corporation in each county in the state, through, across and into or over which the lines of the association, company, copartnership, or corporation extend, multiply the value per mile, as above ascertained, by the number of miles in each of such counties as reported in such statements or as otherwise ascertained, and the result thereof shall be by the clerk of the board certified to the chairman of the board of county commissioners, respectively, of the several counties through, into, over, or across which the lines or routes of said association, company, copartnership, or corporation extend. All taxes due the state from any corporation taxed under the preceding sections shall be paid by the treasurer of each company direct to the state treasurer.

Rev., s. 5286; 1917, c. 234, s. 59; 1919, c. 92, s. 59.

7960. Payment of tax enforced. In case any such association, company, copartnership, or corporation, as named in this act, shall fail or refuse to pay any taxes assessed against it in any county in this state, in addition to other remedies provided by law for the collection of taxes, an action may be prosecuted in the name of the state of North Carolina by the solicitors of the different judicial districts of the state on the relation of the county commissioners of the different counties of this state, and the judgment in such action shall include a penalty of fifty per cent of the amount of taxes as assessed and unpaid, together with reasonable attorney's fees for the reduction of such action, which action may be prosecuted in any county into, through, over, or across which the lines or routes of any association, company, copartnership, or corporation shall extend, or in any county where such association, company, copartnership, or corporation shall have an office or agent for the transaction of business. In case such association, company, copartnership, or corporation shall have refused to pay the whole of the taxes assessed against the same by the state tax commission, or in case such association, company, copartnership, or corporation shall have refused to pay the taxes or any portion thereof assessed to it in any particular county or counties, such action may include the whole or any portion of the taxes so unpaid in any county or counties, but the attorney-general may, at his option, unite in one action the entire amount of the tax due, or may bring separate actions to each separate county or adjoining counties, as he may prefer. All collections of taxes for or on account of any particular county made in any such suit or suits shall be by the said board accounted for as a credit to the respective counties for or on account of which such collections were made by the said board at the next ensuing settlement with such county, but the penalty so collected shall be credited to the general fund of the state; and upon such settlement being made, the treasurers of the several counties shall, at their next settlements, enter credits upon the proper duplicates in their offices, and at the next settlement with such county report the amount so received by them in their settlement with the state,

and proper entries shall be made with reference thereto: Provided, that in any such action the amount of assessment fixed by the state tax commission and apportioned to such county shall not be controverted.

Rev., s. 5287; 1917, c. 234, s. 60; 1919, c. 92, s. 60.

Part 3. Railroads

7961. State tax commission to appraise. The commissioners selected from time to time under the authority to establish the North Carolina state tax commission shall constitute a board of appraisers and assessors for railroad, canal, and steamboat companies and other companies exercising the right of eminent domain.

Rev., s. 5288; 1917, c. 234, s. 61; 1919, c. 92, s. 61.

7962. Returns to be made by officers. The president, secretary, superintendent, or other principal accounting officer within this state, of every railroad, telegraph, telephone, street railway company, whether incorporated by the laws of this state or not, shall, at such dates as real estate is required to be assessed for taxation, return to the said commission for assessment and taxation, verified by the oath or affirmation of the officer making the return, all the following described property belonging to such corporation within this state, viz.: The number of miles of such railroad lines in each county in this state and the total number of miles in this state, including the roadbed, right of way, and superstructures thereon, main and side-tracks, depot buildings and depot grounds, section and tool houses, and the land upon which situated and necessary to their use; water stations and land, coal chutes and land, and real estate and personal property of every character necessary for the construction and successful operation of such railroad or used in the daily operation, whether situated on the charter right of way of the railroad or on additional land acquired for this purpose, except as provided below, including, also, if desired by the state tax commission, Pullman or sleeping cars or refrigerator cars owned by them or operated over their lines: Provided, however, that all machine and repair shops, general office buildings, storehouses and contents located outside of the right of way, and also real and personal property, other than the property as returned above to the state tax commission, shall be listed for purposes of taxation by the principal officers or agents of such companies with the list-takers of the county where the real and personal property may be situated, in the manner provided by law for the listing and valuation of real and personal property. A list of such property shall be filed by such company with the state tax commission. It shall be the duty of the register of deeds, if requested so to do by the state tax commission, to certify and send to the commission a statement giving a description of the property mentioned in the foregoing proviso, and showing the assessed valuation thereof, which value shall be deducted from the total value of the property of such railroad company as arrived at by the commission, in accordance with section 7965, before the apportionment is made to the counties and municipalities. The registers of deeds shall also certify to the commissioners the local rate of taxation for county purposes as soon as the same shall be determined, and such other information obtained in the course of the performance of the duties of their office as the com-

mission shall require of them; and the mayor of each city or town shall cause to be sent to the commission the local rate of taxation for municipal purposes.

Rev., s. 5290; 1917, c. 234, s. 62; 1919, c. 92, s. 62.

This section is constitutional: *R. R. v. New Bern*, 147-165—and the roadbed, right of way, tracks, buildings, grounds, etc., are excluded from the powers of local tax assessors: *Ibid.* Section referred to in *Land Co. v. Smith*, 151-70.

7963. Railroad companies to file maps. Every railroad company operating in this state shall also be required to file with the state tax commission a map or blue-print showing the location within the corporate limits of every incorporated city or town of its main line of road, and its length, together with location of its right of way, not exceeding one hundred feet in width, and the location and value of all real estate owned by any such company within the limits of any such city or town, and not included in the right of way so designated. Every such company shall also report the value of any and all buildings and structures within the limits of any such city or town, whether on or off its right of way, and the commission shall find the value of all such real estate, buildings and structures and shall certify to such city or town the value of same, in addition to the value per mile of so much of its main line as may be located within such city or town, for ad valorem taxation.

1919, c. 92, s. 62a.

7964. Rolling stock reported. The movable property belonging to a railroad company shall be denominated for the purpose of taxation "rolling stock." Every person, company, or corporation owning, constructing, or operating a railroad in this state shall, in the month of May, annually, return a list or schedule to the state tax commission, which shall contain a correct detailed inventory of all the rolling stock belonging to such company and which shall distinctly set forth the number of locomotives of all classes, passenger cars of all classes, sleeping cars and dining cars, express cars, horse cars, cattle cars, coal cars, platform cars, wrecking cars, pay cars, hand-cars, and all other kinds of cars, and the value thereof, and a statement or schedule as follows: (1) The amount of capital stock authorized and the number of shares into which such capital stock is divided; (2) the amount of capital stock paid up; (3) the market value, or if no market value, then the actual value of shares of stock; (4) the length of line operated in each county and total in the state; (5) the total assessed value of all the tangible property in the state; (6) and if desired, all the information required to be annually reported by railroads under section 5291 of the Revisal. Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the commission and with reference to amounts and values on the first day of May of the year of which the return is made.

Rev., s. 5291; 1917, c. 234, s. 63; 1919, c. 92, s. 63.

The rolling stock of the Wilmington and Weldon railroad company used upon the branch roads, or roads otherwise acquired, ascertained by a pro rata standard based on the relative lengths thereof to the whole line, is liable to taxation: *Railroad v. Alsbrook*, 110-137.

The rolling stock of a nonresident railroad corporation passing through the state for purposes of interstate commerce is not liable to taxation in this state: *Bain v. R. R.*, 105-363.

7965. Tangible and intangible property assessed separately. 1. At such dates as real estate is required to be assessed for taxation, the commission shall first

determine the value of the tangible property of each division or branch of such railroad, of rolling stock, and all other physical or tangible property. This value shall be determined by a due consideration of the actual cost of replacing the property, with a just allowance for depreciation on rolling stock, and also of other conditions, to be considered as in the case of private property.

2. They shall then assess the value of the franchise, which shall be determined by due consideration of the gross earnings as compared with the operating expenses, and particularly by consideration of the value placed upon the whole property by the public (the value of the physical property being deducted), as evidenced by the market value of all capital stock, certificates of indebtedness, bonds, or any other securities, the value of which is based upon the earning capacity of the property.

3. The aggregate value of the physical or tangible property and the franchise, as thus determined, shall be the true value of the property for the purpose of an ad valorem taxation, and shall be apportioned in the same proportion that the length of such road in each county bears to the entire length of such division or branch thereof; and the state tax commission shall certify on or before the first day of September to the chairman of the county commissioners and the mayor of each city or incorporated town the amount apportioned to his county, city, or town, and the commission shall make and forward a like certificate to the auditor of the state. All taxes due the state from any railroad company shall be paid by the treasurer of each company directly to the state treasurer within thirty days after the first day of July of each year; and upon failure to pay the state treasurer as aforesaid he shall institute an action to enforce the same in the county of Wake or any other county in which such railroad is located, adding thereto twenty-five per centum of the tax. The board of county commissioners of each county through which such railroad passes shall assess against the same only the tax imposed for county purposes.

Rev., s. 5292; 1917, c. 234, s. 64; 1919, c. 92, s. 64.

A tax imposed by the legislature directly upon a corporation, or its gross receipts, or the cash value of shares of capital stock, or upon each mile of road at a certain sum per mile, and not assessed by assessors, is a franchise or privilege tax: *Worth v. R. R.*, 89-301. Section referred to in *Land Co. v. Smith*, 151-70.

7966. Railroad partly in the state; how assessed. When any railroad has part of its road in this state and part thereof in any other state, the commission shall ascertain the value of railroad track, rolling stock, and all other property liable to assessment by the state tax commission, of such company, as provided in the next preceding section, and divide it in the proportion that the length of such main line of road in this state bears to the whole length of such main line of road, and determine the value in this state accordingly: Provided, the commission shall in valuing the fixed property in this state give due consideration to the character of the roadbed and fixed equipment, number of miles of double track, the amount of gross and net earnings per mile of road in this state, and any other factor which would give a greater or less value per mile of road in this state than the average value for the entire system. On or after the first Monday in July the said commission shall give a hearing to all the companies

interested touching the valuation and assessment of their property. The said commission may, if they see fit, require all argument and communications to be presented in writing.

Rev., s. 5294; 1917, c. 234, s. 65; 1919, c. 92, s. 65.

7967. Leased railroads. If the property of any railroad company be leased or operated by any other corporation, foreign or domestic, the property of the lessor or company whose property is operated shall be subject to taxation in the manner hereinbefore directed. And if the lessee or operating company, being a foreign corporation, be the owner or possessor of any property in this state other than which it derives from the lessor or company whose property is operated, it shall be assessed in respect to such property in like manner as any domestic railroad company.

Rev., s. 5294; 1917, c. 234, s. 66; 1919, c. 92, s. 66.

7968. Assessment in stock-law territory. The state tax commission shall assess the value of real estate belonging to any railroad company within stock-law territory in this state at the same time that they assess railroad property for general purposes.

Every railroad company shall report to the state tax commission, on blanks to be furnished by them, mileage of such railroad within the stock-law territory, width of right of way, weight of rails, value of rails and ties, number, description, and value of all structures within the stock-law territory, and all other information necessary to enable the commission to ascertain the value of such real estate. After assessment shall be made it shall not be changed until the year for the assessment of real property for general tax purposes, except that the commission shall correct any assessment of real property on which any structure over one hundred dollars in value may have been erected, or on which any structure of like value may have been destroyed, as the value of the real estate may be affected thereby.

1907, c. 459.

7969. Powers in assessing. The state tax commission shall have power to summon and examine witnesses and require that books and papers shall be presented to them for the purpose of obtaining such information as may be necessary to aid in determining the valuation of any railroad company. Any president, secretary, receiver, or accounting officer, servant or agent of any railroad or steamboat company having any portion of its property or roadway in this state who shall refuse to attend before the commission when required to do so, or refuse to submit to the inspection of the commission any books or papers of such railroad company in his possession, custody, or control, or shall refuse to answer such questions as may be put to him by the commission or order, touching the business or property, moneys and credits, and the value thereof of such railroad company, shall be guilty of a misdemeanor, and on conviction thereof before any court of competent jurisdiction shall be confined in the jail of the county not exceeding thirty days, and shall be fined in any sum not exceeding five hundred dollars and costs; and any president, secretary, accounting officer, servant or agent aforesaid, so refusing as aforesaid, shall be deemed guilty of contempt of such com-

mission, and may be confined, by order of the commission, in the jail of the proper county until he shall comply with such order and pay the cost of his imprisonment.

Rev., s. 5289; 1917, c. 234, s. 67; 1919, c. 92, s. 67.

7970. Canals and steamboat companies. The property of all canal and steamboat companies in this state shall be assessed for taxation as above provided for railroads. In case any officer fails to return the property as provided in this section, the commission shall ascertain the length of such property in this state, and shall assess the same in proportion to length at the highest rate at which property of that kind is assessed by them.

Rev., s. 5295; 1917, c. 234, s. 68; 1919, c. 92, s. 68.

Under acts 1899, ch. 15, sec. 39, assessment of taxes on the capital stock of a steamboat company must be made by the corporation commission, and not by the county commissioners: *Comrs. v. Steamship Co.*, 128-558.

7971. Valuation certified. The state tax commission shall, upon the completion of the assessments as directed in the preceding sections, certify an itemized list of the names of the various corporations assessed, together with the valuations assessed against each, to the auditor of the state, and it shall be the duty of the auditor to cause the state, school, and pension tax levy to be computed thereon against each corporation so certified, and to furnish the state treasurer with same for collection, and such list shall be charged against the state treasurer. All such taxes due the state shall be paid by the secretary or treasurer of any such corporation direct to the state treasurer within thirty days after receipt of bill from the treasurer of taxes due. The state tax commission shall also certify to the register of deeds of the county the total valuation as hereinbefore determined and apportioned by the commission, and in case of corporate excess, to the county in which the corporation has its principal place of business, and the board of county commissioners shall assess against same the tax imposed for county and school purposes, which shall be paid to the sheriff or tax collector of the county.

1917, c. 234, s. 67(a); 1919, c. 92, s. 67(a).

SUBCHAPTER III. COLLECTION OF TAXES

ART. 10. GENERAL PROVISIONS

7972. Subchapter to remain in force. The provisions of this subchapter shall continue in force whether or not brought forward in subsequent acts to raise revenue or acts to provide for the assessment and collection of taxes, commonly called "revenue acts" and "machinery acts," unless and until expressly repealed or amended by, or clearly inconsistent with, subsequent legislation; it being the intention of the general assembly that this subchapter shall be a standing provision for the government of the matters embraced herein, and not to be repealed by implication because omitted in whole or in part from subsequent legislation on the subject of taxation.

Rev., s. 2849.

7973. Application and construction. The provisions of this subchapter shall apply to all taxes as defined in this chapter, whether state, county, town, city, or other municipal subdivision; and shall be liberally construed in favor of, and in furtherance of, the collection of such taxes.

Rev., s. 2850.

Taxation is regulated entirely by statute, and the revenues of the state are collected under what is known as the machinery act: *Wade v. Comrs.*, 74-81.

7974. Terms defined. Unless such construction or definition would be manifestly inconsistent with or repugnant to the context, the words and phrases following, whenever used in this subchapter, shall be construed to include in their meaning the definitions set opposite the same in this section:

1. “Tax,” “taxes.” Any taxes, special assessments or costs, interest or penalty imposed upon property or polls.

2. “He.” Male, female, company, corporation, firm, society, singular or plural number.

3. “Real property.” Real estate, land, tract, lot—not only the land itself, whether laid out in town or city lots or otherwise with all things therein, but also all buildings, structures, and improvements and other permanent fixtures of whatever kind thereon, and all rights and privileges belonging or in any wise appertaining thereto, and all estates therein.

4. “Sheriff.” Every person who is by law authorized to collect taxes, either state or municipal.

Rev., s. 2851.

7975. Sheriff includes tax collector. Whenever in this chapter a duty is imposed upon the sheriff of a county of which a tax collector has been or may be appointed, it shall be incumbent upon the tax collector to perform such office instead of the sheriff, and such tax collector shall collect all the taxes, have all the emoluments and be subject to all the penalties as provided in case of sheriffs in this chapter, and it shall be the duty of all persons having tax moneys in hand to account for and settle with such tax collector.

Rev., s. 5263; 1917, c. 234, s. 111; 1919, c. 92, s. 111.

7976. No taxes released. No board of county commissioners, or council, or board of aldermen or commissioners of any city or town shall have power to release, discharge, remit, or commute any portion of the taxes assessed and levied against any person or property within their respective jurisdictions for any reason whatever; and any tax so discharged, released, remitted, or commuted may be recovered by civil action from the members of any such board at the suit of any citizen of the county, city, or town, as the case may be, and when collected shall be paid to the proper treasurer. Nothing in this section shall be construed to prevent the proper authorities from refunding taxes as provided in this chapter; nor to interfere with the powers of any officers or boards sitting as a

board of equalization of taxes; nor construed to exempt any taxpayer or property from liability for taxes released, discharged, remitted, or commuted in violation of this section.

Rev., s. 2854; 1901, c. 558, s. 31.

County commissioners have the authority, and it is their duty, to rescind an order providently made releasing one from the assessment of a legal tax upon property: *Lemly v. Comrs.*, 85-379.

7977. Taxes payable in national currency. Taxes are payable in the existing national currency, and shall be collected as prescribed by this chapter, except where otherwise provided by law.

Rev., s. 2853; Code, s. 3674; 1917, c. 231, s. 1; 1919, c. 90, s. 1.

Tax collector has no right to receive anything in payment of taxes except legal tender money, unless tax collector is instructed by competent authority to take county script, or other lawful indebtedness of county, for county taxes: *Kerner v. Cottage Co.*, 123-294.

If tax collector pays or accounts for taxes under an agreement with tax debtor to do so, this will discharge the tax and lien; and he may recover amount back from tax debtor: *Ibid.*

7978. Enforcement of taxes payable to state treasurer. Upon failure to pay the state treasurer within thirty days after the same shall have become due any tax which by law is made payable direct to the state treasurer, it shall be the duty of the state treasurer to enforce payment of the same, and to this end shall have the same rights of levy and sale of any property owned by any such person as given in section 7869 to the sheriffs in collection of schedule B taxes, and upon application by the state treasurer it shall be the duty of the sheriff in any county to levy upon and sell such property to satisfy the tax due, together with any costs and penalties. The state treasurer may also institute an action to enforce the same in the county of Wake or in the county in which the property is located.

Rev., s. 5266; 1917, c. 234, s. 116; 1919, c. 92, s. 116.

7979. Remedy of taxpayer for unauthorized tax. Unless a tax or assessment, or some part thereof, be illegal or invalid, or be levied or assessed for an illegal or unauthorized purpose, no injunction shall be granted by any court or judge to restrain the collection thereof in whole or in part, nor to restrain the sale of any property for the nonpayment thereof; nor shall any court issue any order in claim and delivery proceedings or otherwise for the taking of any personalty levied on by the sheriff to enforce payment of such tax or assessment against the owner thereof. Whenever any person shall claim to have a valid defense to the enforcement of a tax or assessment charged or assessed upon his property or poll, such person shall pay such tax or assessment to the sheriff; but if, at the time of such payment, he shall notify the sheriff in writing that he pays the same under protest, such payment shall be without prejudice to any defenses or rights he may have in the premises, and he may, at any time within thirty days after such payment, demand the same in writing from the treasurer of the state or of the county, city, or town, for the benefit or under the authority or by request of which the same was levied; and if the same shall not be refunded within ninety days thereafter, may sue such county, city, or town for the amount so demanded, including in his action against the county both state and county tax; and if upon the trial it shall be determined that such tax or any part thereof was levied or

assessed for an illegal or unauthorized purpose, or was for any reason invalid or excessive, judgment shall be rendered therefor, with interest, and the same shall be collected as in other cases. The amount of state taxes for which judgment shall be rendered in such action shall be refunded by the state treasurer.

Rev., s. 2855; 1901, c. 558, s. 30.

See, also, section 858. This section constitutional: *Railroad v. Reidsville*, 109-494, and cases there cited; *Mathews v. Comrs.*, 99-69; *Railroad v. Lewis*, 99-62.

An injunction will not lie to restrain the collection of an invalid or excessive tax: *Hall v. Fayetteville*, 115-281. Where complaint alleges a tax illegal and no answer is filed thereto, the collection of the tax should be restrained until the final hearing: *Armstrong v. Stedman*, 130-217. The injunction to restrain collection of tax complained of in this case was properly refused: *Smallwood v. Newbern*, 90-36. The court will not enjoin the collection of an entire tax, if the portion conceded to be valid can be separated from that claimed to be invalid: *R. R. v. Comrs.*, 148-220.

Effect of section is to give an additional remedy to test the validity of a tax, leaving it to the discretion of taxpayer to pay tax and sue to recover it back, or to proceed by injunction: *Range Co. v. Carver*, 118-328.

When county commissioners placed solvent credits on the tax books without notice to the owner, and the sheriff was proceeding to sell property to enforce payment, the owner was entitled to an injunction to restrain the sale until final hearing: *Lumber Co. v. Smith*, 146-199—in such action the sheriff is proper defendant, and county commissioners may be joined at their request, *Ibid*.

Where notes in the hands of A. were taxed in one county as the property of B., and in another county as the property of C., an action to restrain collection may be brought in either county against the sheriffs of both counties: *Sherrod v. Dawson*, 154-525. A special assessment levied on property for improvements is a tax, and will not be restrained if properly assessed: *Marion v. Pilot Mountain*, 170-118; *Lewis v. Pilot Mountain*, 170-109.

An injunction pendente lite in an action to test the constitutionality of chapter 158, acts 1879, will not be granted to restrain proceedings under the provisions of the act, except to restrain the collection of the tax until the merits of the controversy can be determined: *R. R. v. Comrs.*, 82-259.

Legislature cannot compel return of legally collected taxes: *Bailey v. Raleigh*, 130-209.

ACTION TO RECOVER ILLEGAL TAX PAID. If tax was paid under protest, proper remedy to test its legality is by an action to recover amount paid: *Murdock v. Comrs.*, 138-124; *Hilliard v. Asheville*, 118-845; *Schaul v. Charlotte*, 118-733; *Range Co. v. Carver*, 118-328.

Repayment of an invalid tax assessment cannot be recovered unless demanded in writing within thirty days: *Bristol v. Morganton*, 125-365; *Hatwood v. Fayetteville*, 121-207; *Hall v. Fayetteville*, 115-281—and this provision as to 30 days notice is mandatory: *Hatwood v. Fayetteville*, 121-207; *Teester v. Wallace*, 138-264; *Railroad v. Reidsville*, 109-494.

Requirement of demand is not confined to claims for refunding any particular taxes, or taxes alleged to be invalid on any particular account; it extends to all taxes: *R. R. v. Reidsville*, 109-494.

Taxpayer may maintain an injunction to prevent sale of his property under an illegal tax, or he may pay tax under protest and sue to recover it: *Purnell v. Page*, 133-125.

The remedy generally provided is for the taxpayer to pay the tax under protest and sue to recover the amount paid: *State v. Snipes*, 161-243; *Marion v. Pilot Mountain*, 170-118. In such case the claimant is not required to present his claim and have it passed on under sections 442, 1330: *R. R. v. Brunswick*, 178-254.

Where plaintiff alleged that she paid sheriff \$51.80 for her taxes, and afterwards, on sheriff's removal from office, that she was forced to pay this sum a second time: Held, no cause of action was stated against county: *Burbank v. Comrs.*, 92-257.

In action by taxpayer against county commissioners to recover amount of alleged excessive tax paid by him he is not entitled to recover unless he can show that valuation of his property upon tax books is greater than that fixed by proper authorities, or that tax which he has been forced to pay was greater than it would have been if correctly computed at legal rate on adjudged valuation: *Pickens v. Comrs.*, 112-698; *Guano Co. v. New Bern*, 172-258.

Neither a taxpayer nor a sheriff can plead a set-off in a suit for taxes due and owing:

Comrs. v. Hall, 177-490; *Graded School v. McDowell*, 157-316; *Wilmington v. Bryan*, 141-679; *State & Guilford Co. v. Georgia Co.*, 112-34; *Gatling v. Comrs.*, 92-536; *Cobb v. Elizabeth City*, 75-1; *Battle v. Thompson*, 65-406.

ART. 11. RIGHTS OF PARTIES ADJUSTED

7980. Taxes paid in judicial sales and sales under powers. In all civil actions and special proceedings wherein the sale of any real estate shall be ordered, the judgment shall provide for the payment of all taxes then assessed upon the property and remaining unpaid, and for the payment of such sums as may be required to redeem the property, if it has been sold for taxes and such redemption can be had; all of which payments shall be adjudged to be made out of the proceeds of sale. The judgment shall adjust the disbursements for such taxes and expenses of redemption from tax sales between the parties to the action or proceeding in accordance with their respective rights. And whenever any real estate shall be sold by any person under any power of sale conferred upon him by any deed, will, power of attorney, mortgage, deed of trust, or assignment for the benefit of creditors, the person making such sale must pay out of the proceeds of sale all taxes then assessed upon such real estate and such sums as shall be necessary to redeem the land, if it has been sold for taxes and such redemption is practicable.

Rev., s. 2857; 1901, c. 558, s. 47.

Land sold on the foreclosure of a mortgage is liable for taxes assessed after execution of mortgage: *Wooten v. Sugg*, 114-295.

It is incumbent on a mortgagee to see to it that the land mortgaged is listed for taxes and that taxes be paid: *Ibid.*

Under revenue act of 1891 sheriff's deed for land sold for taxes is good as against a mortgage recorded before sale, but after levy of taxes: *Powell v. Sikes*, 119-231.

As to collection of taxes in arrears affecting purchasers without notice, see *Moore v. Sugg*, 114-292.

Where prior to the listing of land for taxes, for nonpayment of which land was sold, owner had conveyed property to a trustee in trust to pay a debt, tax collector's deed divested title of trustor, trustee, and cestui que trust, and was superior to deed of purchaser at trustee's sale: *Lyman v. Hunter*, 123-508.

In sale of land under order of court it is proper to direct the payment of all taxes which are liens on the land, so as to convey a clear title: *Smith v. Miller*, 158-99.

7981. Tax paid by holder of lien; remedy. Any person having a lien or encumbrance of any kind upon real estate may pay the taxes due by the owner thereof in so far as the same are a lien upon such real estate, and the amount of taxes so paid shall, from the time of payment, operate as a lien upon such real estate in preference to all other liens, which lien may be enforced by action in the superior court in term. The money so paid may also be recovered by action for moneys paid to his use against the person legally liable for the payment of such taxes.

Rev., s. 2858; Code, s. 3700; 1901, c. 558, s. 46; 1879, c. 71, s. 55.

Lien of tax on land is generally superior to rights of mortgagor or mortgagee, and it is duty of mortgagee and of his assigns to see to the discharge of tax liens as they fall due: *Exum v. Baker*, 115-242; see annotations under sections 7980, 8013, 8019.

Mortgagee is not liable for taxes, though the tax lien is superior to lien of mortgagee: *Ins. Co. v. Day*, 127-133.

It is incumbent on a mortgagee to see to it that land mortgaged is listed for taxes and that the taxes be paid: *Wooten v. Sugg*, 114-295.

Money subsequently paid by a mortgagee to acquire a tax title on the land becomes a lien on the land: *Cauley v. Sutton*, 150-327.

7982. Forfeiture by life tenant failing to pay. Every person shall be liable for the taxes assessed or charged upon the property or estate, real or personal, of which he is tenant for life. If any tenant for life of real estate shall suffer the same to be sold for taxes by reason of his neglect or refusal to pay the taxes thereon, and shall fail to redeem the same within one year after such sale, he shall thereby forfeit his life estate to the remainderman or reversioner. The remainderman or reversioner may redeem such lands, in the same manner that is provided for the redemption of other lands. Moreover, such remainderman or reversioner shall have the right to recover of such tenant for life all damages sustained by reason of such neglect or refusal on the part of such tenant for life. If any tenant for life of personal property suffer the same to be sold for taxes by reason of any default of his, he shall be liable in damages to the remainderman or reversioner.

Rev., s. 2859; Code, ss. 3698, 3699; 1901, c. 558, s. 45; 1879, c. 71, ss. 53, 54.

Widow who has a homestead allotted her in lands of her deceased husband in lieu of dower is a tenant for life thereof, within the purview of statutes which provide that when "a person seized as tenant for life" shall not, within one year after sale for taxes, redeem lands sold, he shall forfeit to the person next in title his or her right in the premises: *Tucker v. Tucker*, 108-235.

Tax title which conveys only interest of life tenant is not color of title against remainderman, nor is possession thereunder adverse until death of life tenant: *Smith v. Proctor*, 139-314.

Sale and conveyance by sheriff under revenue act of 1874-5 of the lands of a life tenant for default in payment of taxes on his part does not operate to convey interest of remaindermen: *Ibid*.

While the life tenant should pay the taxes, the remainderman or reversioner may pay to prevent a sale: *Smith v. Miller*, 158-99.

7983. Remedies of cotenants and joint owners. Any one of several tenants in common, or joint tenants or copartners shall have the right to pay his share of the taxes assessed or due upon the real estate held jointly or in common, or, if such estate has been sold for taxes, he may redeem his share by paying his proportionate part of the amount required for redeeming the whole. Where he has paid his share of the taxes or amount required for redemption and the land has been or shall be divided by actual partition the share set apart to him in severalty shall be free from the lien of, and shall not be liable to be subjected in any manner to, the payment of the residue of taxes assessed upon such property; but such residue of taxes and the costs and penalties incident thereto shall be a lien upon the residue of such real estate, which residue shall be subjected to the satisfaction thereof; and when he has paid his share of the taxes, or amount necessary to redeem, and the real estate is sold under judicial proceedings for partition, his share of the proceeds shall not be diminished by disbursements for the residue of such taxes or for redeeming the property, and the costs and penalties incident thereto. Any such part owner in real estate shall have the right to pay the whole of the taxes assessed thereon and all costs and penalties incident to such taxes, and to redeem such real estate as a whole when it has been sold for taxes, and all sums by him so paid in excess of his share of such taxes, costs, and penalties and amounts required for redemption, shall constitute a lien upon the shares of his cotenants or associates, payment whereof, with interest, he may enforce in proceedings for partition, actual or by sale, or in any other appropriate judicial proceeding. When one tenant in common, joint tenant, or copartner shall have paid

his proportionate part of the taxes, as allowed by this section, before a sale for taxes, the sheriff shall except his undivided interest from the sale and in the certificate of sale and deed for the property.

Rev., s. 2860; 1901, c. 558, ss. 13, 14, 47.

Tenant in common may pay his share of the tax and let the other interest be sold, and purchaser of such interest will be protected by the three-year statute: *Ruark v. Harper*, 178-249.

The law authorizing one tenant in common to pay his share of the taxes or to redeem his share of the land does not apply where the cotenant is in possession for all: *Smith v. Smith*, 150-81.

7984. Taxes against infants and lunatics. The lands of a minor, lunatic, or other person non compos mentis, shall in no case be liable to be sold for taxes, but the personal property of such persons may be levied upon and sold for all taxes due upon the estates of such persons; and their real estate shall be and remain subject to a lien for all such taxes, with interest thereon at six per centum per annum, from the time such taxes fall due until paid.

Rev., s. 2861; Code, s. 3691.

7985. Fiduciaries to pay taxes. It shall be the duty of every guardian, executor, administrator with the will annexed, agent, trustee, receiver, or other fiduciary in whose care or control any property or estate, real or personal, may be, to pay the taxes thereon out of the trust funds in his hands, if any there be; and if he fail so to do he shall become personally liable for such taxes, and such liability may be enforced by an action against him in the name of the sheriff. If he permit such property to be sold by reason of his negligence to pay the taxes when he has funds in hand, he shall be liable to his ward, principal, or cestui que trust for all actual damages incident to such neglect. This section shall not have the effect of relieving the estates held in trust or under the control of fiduciaries from the lien of such taxes.

Rev., s. 2862; Code, ss. 3698, 1595; 1879, c. 71, s. 53; R. C., c. 54, s. 27; 1868-9, c. 201, s. 32; 1762, c. 69, s. 14.

The ordinary method of collecting taxes by the sheriff does not apply to taxes from a decedent's estate: *Sherrod v. Dawson*, 154-525. Section referred to in *Headman v. Comrs.*, 177-261.

ART. 12. TAX LIENS

7986. No lien on personalty. Taxes shall not be a lien upon personal property, except where otherwise provided by law, but from a levy thereon: Provided, that no mortgage or deed of trust executed upon personal property shall have the effect of creating a lien thereon superior to the lien acquired by a subsequent levy upon said property for the payment of the state, county, and municipal taxes, assessed against the same; but the sheriff or other tax collector levying upon such property, for the purpose of collecting the taxes due thereon, shall give due notice to the mortgagee or trustee of such property of the amount of such taxes at least ten days before the sale of the same, and such trustee or mortgagee shall have the right to pay said taxes and the costs incident to making the levy, when

the sheriff or tax collector shall release the same to such trustee or mortgagee, and the amount so paid by said trustee or mortgagee shall constitute a part of the debt secured in the mortgage or deed of trust.

Rev., s. 2863; Code, s. 3682; 1911, c. 207.

Although tax list, when placed in hands of sheriff for collection, has force of a docketed judgment and execution as to real estate, it creates no lien on personal property until levied, as against bona fide purchasers for value from taxpayer's assignee for benefit of creditors: *Shelby v. Tiddy*, 118-792. The proviso in this section is within the power of the legislature, but there should be a levy by the officer to give effect to it: *Berry v. Davis*, 158-170.

In case of an assignment by a corporation to a trustee, the sheriff or tax collector has no priority over creditors who obtained judgment and execution before assignment was registered: *Alexander v. Farrow*, 151-320.

7987. Lien on realty. The lien of the state, county, and municipal taxes levied for any and all purposes in each year shall attach to all real estate of the taxpayer situated within the county or other municipality by which the tax list is placed in the sheriff's hands, which lien shall attach on the first day of June, annually, and shall continue until such taxes, with any penalty and costs which shall accrue thereon, shall be paid.

Rev., s. 2864; Code, s. 3682; 1879, c. 71, s. 26.

Section referred to in *Berry v. Davis*, 158-170.

7988. Lien of agent paying tax. When property is assessed to any person as agent for another or in a representative capacity, such person shall have a lien upon such property or any property of his principal in his possession until he is indemnified against the payment thereof, or, if he has paid the tax, until he is reimbursed for such payment.

Rev., s. 5254; 1917, c. 234, s. 84; 1919, c. 92, s. 84.

7989. Tax lien on railroad property. The taxes upon any and all railroads in this state, including roadbed, right of way, depots, side-tracks, ties and rails, now constructed or hereafter to be constructed, are hereby made a perpetual lien thereupon, commencing from the first day of May in each current year, against all claims or demands whatsoever of all persons or bodies corporate, except the United States and this state; and the above described property or any part thereof may be taken and held for payment of all taxes assessed against such railroad company in the several counties in this state.

Rev., ss. 2865, 5296; 1917, c. 234, s. 98; 1919, c. 92, s. 98.

7990. Tax lien enforced by action to foreclose. A lien upon real estate for taxes or assessments due thereon may be enforced by an action in the nature of an action to foreclose a mortgage, in which action the court shall order a sale of such real estate, or so much thereof as shall be necessary for that purpose, for the satisfaction of the amount adjudged to be due on such lien, together with interest, penalties, and costs allowed by law, and the costs of such action. When such lien is in favor of the state or county, or both, such action shall be prosecuted by and in the name of the county; when the lien is in favor of any other municipal corporation the action shall be prosecuted by and in the name of such corporation. When such lien is in favor of any private individual or private corporation holding a certificate of tax sale or deed under a tax sale, whether as

original purchaser at a tax sale or as assignee of the county or other municipal corporation or of any other holder thereof, such action shall be prosecuted in the name of the real party in interest.

Rev., s. 2866; 1901, c. 558, ss. 42, 43.

The collection of taxes may be enforced by suit instead of by summary method of levy and sale: *Wilmington v. Moore*, 170-52, distinguishing *Berry v. Davis*, 158-170.

Fact that revenue act prescribes a specific remedy for the collection of taxes does not restrict state to pursue that method, nor preclude it from seeking aid of the superior court through a creditor's suit. The specific remedy pointed out restricts only officers who collect revenue, and not the sovereign: *Guilford v. Georgia Co.*, 112-34.

Fact that individual can be indicted for failure to list his property for taxation does not bar state from proceeding by suit to enforce payment of taxes: *Ibid.*

Under chapter 182, acts of 1895, authorizing collection of delinquent taxes, interest and penalties, no rate of interest being fixed therein, only six per cent interest per annum can be recovered: *Wilmington v. Stolter*, 122-395.

An action pending to recover arrearages of taxes brought under chapter 182, Acts of 1895, authorizing collection of unpaid taxes for past years, is not affected by repeal of such statute: *Ibid.*

It is no defense to a legal assessment and claim of taxes that taxes under an illegal or irregular assessment have been paid: *R. R. v. Comrs.*, 82-259.

A tax is not a debt in the ordinary sense of that word. It is an impost levied by the sovereign for support of state, and it is not founded on contract. When statute prescribed no special manner for its collection, it may be collected by an action at law, but when a method is provided by statute, an action for its collection cannot be maintained: *Gatling v. Comrs.*, 92-536.

Neither a taxpayer nor a sheriff can plead a set-off in a suit for taxes due and owing: *Comrs. v. Hall*, 177-490; *Graded School v. McDowell*, 157-316; *Wilmington v. Bryan*, 141-679; *State and Guilford Co. v. Georgia Co.*, 112-34; *Gatling v. Comrs.*, 92-536; *Cobb v. Elizabeth City*, 75-1; *Battle v. Thompson*, 65-406.

A law to provide for the collection of taxes for past years is constitutional; and the right of the legislature to pass such law is not affected by the lapse of time: *R. R. v. Comrs.*, 82-259; *Wilmington v. Cronly*, 122-283. And collection may be enforced by appropriate action without first resorting to levy and sale: *Wilmington v. Moore*, 170-52.

Neither the three nor the ten years statute of limitations applies to an act authorizing the state or a county or city to recover delinquent taxes, unless such an act expressly so provides: *Wilmington v. Cronly*, 122-383.

7991. Lien of endorsed tax list. Every tax list before being placed in the hands of the sheriff shall be endorsed by the authorities levying the taxes with an order for their collection. The tax list, when thus endorsed, shall have the force and effect of a duly docketed judgment and of an execution against the real and personal property of the persons charged with taxes on such list.

Rev., ss. 2856, 5238; Code, s. 3681; 1917, c. 234, s. 83; 1919, c. 92, s. 83.

For form of endorsement, see section 7930.

The only authority given to a sheriff or tax collector to enforce the lien on land for taxes is the tax list, with order of clerk to sheriff to collect, endorsed thereon: *Peebles v. Taylor*, 121-38.

Certified copy of items in tax list incompetent as evidence: *State v. Champion*, 116-987.

Tax list has the force of an execution: *Wilmington v. Sprunt*, 114-310; *Davie v. Blackburn*, 117-383; *State v. Lutz*, 65-503—but only as between sheriff and taxpayer, *Davie v. Blackburn*, 117-383.

The tax list issued to a sheriff has the force of an execution, and justifies sheriff in making seizures thereunder as fully as an execution issued from a court of competent jurisdiction: *State v. Lutz*, 65-503; *Shelby v. Tiddy*, 118-792.

Tax collector can sell or distrain for taxes due only in cases where property actually appears on tax lists and has been duly assessed: *Peebles v. Taylor*, 121-38.

Power of sheriff in selling land for taxes, being a naked one, uncoupled with an interest, is strictly construed, so that he must conform in its execution to terms of statute which creates and confers it; but, the main object of statute being to raise revenue for state, the courts will not exact such a rigid observance of forms as will defeat primary purpose, but will apply to such sales rules applicable to execution sales for private debts: *Hays v. Hunt*, 85-303.

ART. 13. TIME AND MANNER OF COLLECTION

7992. Sheriff to collect taxes due. Whenever any taxes shall be due and unpaid, the sheriff, who by law is required to collect the same, shall immediately proceed to collect them as prescribed by this chapter.

Rev., s. 2867; Code, s. 3686; 1872-3, c. 115, s. 28.

Coroner, upon death or insanity of sheriff, has no right to collect taxes: *Somers v. Comrs.*, 123-582.

A deputy sheriff, who in his deputation is authorized to collect state and county taxes out of the persons named in said deputation, is not required to exhibit a certified copy of the tax lists from the officer required to make out said list before he distrains property to enforce the payment thereof: *State v. Lutz*, 65-503. The fact that the sheriff has accounted for the tax does not interfere with his right to collect: *Berry v. Davis*, 158-170.

7993. Sureties of sheriff may collect, when. If any sheriff shall die during the time appointed for collecting taxes, his sureties may collect them, and for that purpose shall have all power and means for collecting the same from the collectors and taxpayers as the sheriff would have had, and shall be subject to all the remedies for collecting and settling the taxes, on their bond or otherwise, as might have been had against the sheriff if he had lived.

Rev., ss. 2868, 5264; 1917, c. 234, s. 112; 1919, c. 92, s. 112.

7994. Payment of taxes. 1. When due. All taxes shall be due on the first Monday in October in each year.

2. Discounts and penalties in payments. On all taxes paid in the months of October and November a discount shall be given to the taxpayer of one per cent. All taxes paid in the month of December shall be paid at the net amount charged, and from and after the first day of January a penalty of one per cent per month shall be charged and collected by the sheriff or tax collector; that is to say, that on all taxes paid in the month of January, after the first day of January, a penalty of one per cent shall be added on the taxes paid, and in the month of February, after the first day of February, a penalty of two per cent shall be added, and an additional penalty of one per cent for each additional month of delay in settlement of same. Upon all taxes paid into the state treasury and upon all county taxes paid into the county treasury by any sheriff or tax collector on or before the fifth day of December, the state auditor and county treasurer shall credit against the total amount of taxes charged against any such sheriff or tax collector a discount of one per cent, and upon all payments made into the state treasury and upon all county taxes paid into the county treasury by the sheriff or tax collector between the fifth day of December and the fifth day of January payments shall be credited at the net amount of such payments. Upon all taxes charged against any such sheriff or tax collector and remaining unpaid on the fifth day of January a penalty of one per cent shall be added, and an additional penalty of one per cent shall be added

to so much of said taxes as remain charged against such sheriff or tax collector and unpaid on the fifth day of each succeeding month thereafter until paid. Any provisions in any local act prescribing a different schedule of discounts and penalties than that provided here is hereby repealed.

3. *Receipt for payment.* The sheriff or tax collector shall note on the tax duplicate against the name of the party the date of payment and the amount paid. He shall also give receipt to the parties, stating the amount of the state and county tax separately, and the date of payment; and for failure to give such receipt, stating the state and county tax separately, he shall be guilty of a misdemeanor and, on conviction, shall be fined at the discretion of the court.

4. *When sheriff entitled to tax books.* The sheriff or tax collector shall not collect the taxes for any year until he shall have settled in full with the state and county for the taxes of the previous year (if he was sheriff or tax collector) and given the bonds required by law; and if upon examination the commissioners are not satisfied with the solvency of the surety to said bonds, they may require new bonds to be given. The sheriff or collecting officer shall produce receipts for the state and county taxes for the previous year, if he was sheriff or tax collector, before receiving the tax duplicate from the board of commissioners, and in the event the sheriff fails to produce the aforesaid receipts or give the required bond, the board of commissioners shall appoint a tax collector who shall give bond as required of the sheriff to faithfully collect and pay over the taxes according to law.

Rev., ss. 2852, 5241; 1917, c. 234, s. 88; 1919, c. 92, s. 88.

Statute which discriminates between the different counties of the state, as to the times when the payment of taxes can be compelled, is not unconstitutional, since its provisions affect every one alike in the localities to which they are applicable and contain no violation of the principle of equation of taxation: *State v. Jones*, 121-616.

Under section 35, chapter 169, of laws of 1897, taxpayer may pay his taxes at any time before the last day of November without incurring any penalty or punishment, but under section 36, sheriff, whenever justified reasonably by the facts in the case, may levy and collect by distress at any time after the first day of November: *State v. Bryant*, 121-569.

Failure to pay taxes before the day on which collector's right to collect them by distress begins is not an indictable offense under sections 52 and 53 of chapter 168, Acts of 1897: *State v. Jones*, 121-616.

Sureties on sheriff's bond, who have had to pay for sheriff's default, cannot recover from county commissioners for their failure to comply with this section: *Hudson v. McArthur*, 152-445.

7995. Sheriff collecting by deputy. When the sheriff shall collect by his deputies they shall, before the clerk of the board of commissioners or before a justice of the peace of the county, take and subscribe an oath faithfully and honestly to account for the taxes with the sheriff or other person authorized to receive the same. Such oath shall be filed with the register of deeds and kept in the office of the board of commissioners, and for failure of any deputy sheriff to pay over such taxes as he may collect he shall be guilty of a misdemeanor.

Rev., s. 5241; 1917, c. 234, s. 88; 1919, c. 92, s. 88.

7996. Sheriff to attend for collection. The sheriff or his deputy or tax collector shall attend at the courthouse or his office in the county town during the months of October and November for the purpose of receiving taxes. He shall also in like

manner attend at least one day during the month of October at some one or more places in each township, of which fifteen days notice shall be given by advertisement at three or more public places and in a newspaper, if one is published in the county: Provided, that nothing in this section shall be construed to prevent the collecting officer from levying and selling after the first day of November, but he shall not sell before that day unless he has reason to believe the taxpayer is preparing to leave the county or state.

Chapter one hundred and fifty of the laws of one thousand eight hundred and eighty-three, and amendments thereto, and all special acts prescribing or authorizing a time for collection and settlement of state taxes differing from the general provisions of this chapter for the collection and settlement of state taxes, are hereby repealed.

Rev., ss. 2870, 2882, 5242; 1903, c. 251, s. 80; 1905, c. 590, s. 80; 1917, c. 234, s. 89; 1919, c. 92, s. 89.

The principle that if a creditor by any binding contract gives time to a principal debtor, sureties are thereby discharged, applies when a state is a creditor, as well as when an individual is: *Prairie v. Jenkins*, 75-545.

A legislative extension of time within which a sheriff may settle state taxes does not exonerate the sureties upon his bond: *Worth v. Cox*, 89-44.

An injunction obtained by sureties of sheriff, staying collection of a judgment for public taxes on ground of their discharge because of extension of time, will not be continued until final hearing in order that the facts may be found whether said sheriff had performed supposed condition as to bring himself within act allowing extension of time, and did thereafter perform the conditions which he was required thereafter to perform: *Prairie v. Jenkins*, 75-545.

7997. Commissioners may change the time for attending in townships. The board of commissioners of any county shall have the right, by resolution spread upon the minutes of the board, to abolish altogether or to change the time or times upon which the sheriff or other tax collector is now, or hereafter may be, required to attend each township in the county for the collection of the taxes levied and placed in his hands. Upon the passage of said resolution by the board of commissioners the sheriff or other tax collector shall attend in each township in his county at such times as shall be fixed by said board for the collection of taxes thereof: Provided, that fifteen days notice of the time and place of such attendance shall be given by the sheriff or other tax collector by advertisements in some newspaper published in said county, if one is published therein, or by advertisements posted at three or more public places, if no newspaper is published therein.

1919, c. 52.

7998. Time limited for collection of taxes. The sheriff and, in case of his death, the sureties, shall have one year and no longer from the day prescribed for his settlement and payment of the state taxes to finish the collection of all taxes; but the extension of time for collection shall not extend the time of his settlement of the taxes.

Rev., ss. 2869, 5265; 1917, c. 234, s. 113; 1919, c. 92, s. 113.

Section applied: *Berry v. Davis*, 158-170.

7999. Abstract of tax due sent to another county. If any person liable for taxes has no property in the county in which such taxes are due, but has property in any other county, the sheriff may make and certify under his hand an abstract of the taxes due by such person, as shown by the tax lists in his hands, and forward the same to the sheriff of any county in which property of such taxpayer may be found, with directions to collect such taxes. Such abstract shall have the force and effect of a tax list in any county to which it is sent, and the sheriff to whom it is sent shall collect the taxes in the same manner as he collects taxes appearing on the regular tax list of his county, and shall pay over to the sheriff from whom he receives such abstract the amount collected, less his lawful commissions. He shall make return of his proceedings under such abstract within thirty days after its receipt. Such abstract or a copy or duplicate thereof may be sent for collection to the same or some other county until the amount due shall be collected.

Rev., s. 2871; Code, s. 3692; 1872-3, c. 115, s. 28.

8000. Diligent inquiry as to removals. It shall be the duty of every sheriff or every tax collecting officer of any county, city, or town, whenever he is informed that a taxpayer has removed from his county, city, or town without paying the taxes listed for that year, to make diligent inquiry to what county, city, or town the said taxpayer has removed, and in the settlement of the sheriff or other tax-collecting officer for any county, city, or town he shall state, under oath, that he has used due diligence and made faithful inquiry for the location of all taxpayers who have removed from his county, city, or town owing tax for said fiscal year, or the same shall be charged to him and not be allowed in his insolvent list; and the board of county commissioners, or other officers with whom said sheriff or other tax-collecting officer is required by law to make his settlement, shall carefully inspect the insolvent list filed for said fiscal year, and if said sheriff or other tax-collecting officer has not complied with the law to enforce collection of taxes at all times he shall be charged with the same.

Rev., s. 2872; 1905, c. 355.

8001. Register's certificate upon removal of taxpayer. It shall be the duty of the sheriff or other tax-collecting officer of any county, city, or town, when he is informed that any taxpayer has removed from his county, city, or town without paying his taxes listed for that year and has no property in the county, city, or town, or no property in any county known to the collecting officer, to make a report of the same, with a return of the tax receipt, to the register of deeds of his county, who shall make out a certificate, under his hand and seal, that such taxes were listed for that year, that the same are due and reported unpaid by the collecting officer for such county, city, or town. The sheriff or other collecting officer of any county, city, or town shall send the receipt, with the certificate, to the collecting officer of the county, city, or town to which the taxpayer has removed, and the same shall be a tax list in his hands for the collection of such taxes.

Rev., ss. 2873, 2874; 1905, c. 355, ss. 2, 3.

8002. Tax collected upon certificate. The tax collector to whom such tax receipt has been sent shall proceed to the collection of the taxes according to the rules

and regulations provided for the collection of taxes in his own county, city, or town, and shall report his proceedings to the officer from whom he received the said receipt within sixty days thereof. If such taxpayer is insolvent and the collecting officer cannot collect the tax as provided by law in his county, city, or town, he shall return the tax receipt, and shall state under his oath that he has used due diligence in making collection by levy, garnishment, or otherwise, that the taxpayer is insolvent and same cannot be collected; otherwise he shall be liable on his official bond for the tax, to be collected in a suit in any court in this state in the corporate name of the county, city, or town to which such taxes are due. The collecting officer shall be allowed a compensation of ten per centum for making collection of such taxes, and the register of deeds shall be allowed ten cents for making the above certificate, to be paid by the county, city, or town to which the taxes are due.

Rev., s. 2875; 1905, c. 355, ss. 4-6.

8003. Property in hands of receiver. Whenever taxes are duly assessed against any corporation having chartered rights, or doing business in this state, or having property in this state, or against any person resident in this state or doing business, or having property in this state, and the tax list is in the hands of the sheriff, it shall be competent for such sheriff whenever such taxes, whether listed or unlisted, are due and unpaid, to levy upon and sell such part of the property, real and personal, belonging to such person or corporation as may be necessary to pay such taxes, listed or unlisted, whether the property of such corporation or person be in the hands of a receiver duly appointed or not; and in such cases it shall not be necessary for such officer to apply to and obtain from the court appointing such receiver, or having jurisdiction of the property or of the receiver, an order for the payment of such taxes, but the same may be collected as if the property was not in the hands of a receiver or in the custody of the law. The powers conferred by this section upon the sheriff shall not have the effect to relieve the receiver from his duties and liabilities to pay taxes as provided elsewhere in this chapter.

Rev., s. 2879; Code, ss. 699, 700; 1879, c. 2451, ss. 1-4.

The right to have the charter of corporation declared forfeited for failure to pay taxes does not prevent the state from enforcing payment by means of a receiver: *Guilford v. Georgia Co.*, 112-34. That the property is in the hands of a receiver does not render a tax sale invalid: *Headman v. Comrs.*, 177-261.

8004. Attachment and garnishment proceedings. If any poll tax or other tax shall not be paid within sixty days after the same shall be demandable, it shall be the duty of the sheriff, if he can find no property of the person liable sufficient to satisfy the same, to attach any debt or other property incapable of manual delivery, due or belonging to the person liable, or that may become due before the expiration of the calendar year, and the person owing such debt or having such property in possession shall be liable for such tax. Any corporation, firm, or person who shall, on demand made, refuse to give to the tax collector of any county, city, or town a list giving the names of all persons employed by

them who are liable for tax, shall be guilty of a misdemeanor. For the purpose of carrying into effect the provisions of this section, the following form shall be used as an attachment, viz.:

To A. B.: Take notice, that this is to attach any debt that is now due or may become due to C. D., a delinquent in his poll (or property) tax for the year of nineteen hundred and, and you are hereby summoned to appear before E. F., an acting justice of the peace for county, and disclose any indebtedness which is or may be due said delinquent by you during the present calendar year, and to show cause why judgment should not be rendered against you for said delinquent tax and costs of this proceeding. day of, 19....

....., E. F.,

Justice of the Peace.

For serving notice the sheriff shall receive twenty-five cents, and if judgment is rendered, the justice shall receive twenty-five cents as costs. The justice shall hear and determine the matter as in other civil actions, and, if he find that the garnishee owes the delinquent any sum due or to become due during the calendar year, or has property or effects belonging to such delinquent, he shall give judgment against the garnishee for the taxes due by the delinquent and for costs, or for so much of such taxes and costs as the facts will warrant. If the amount of the tax be beyond the jurisdiction of the court of a justice of the peace, the sheriff may proceed by action and attachment in the superior court. All actions and proceedings instituted under this section shall be in the name of the sheriff. In no case shall the garnishee be adjudged to pay a greater sum than his indebtedness to the taxpayer or the value of the property of such taxpayer in his hands or under his control.

Rev., ss. 2880, 5201; Code, s. 3675; 1917, c. 234, s. 41; 1919, c. 92, s. 41.

Where an assignee for the benefit of creditors of taxpayer sells personal property of his assignor, on which a tax had been assessed, but not levied prior to assignment, the proceeds in hands of assignee are not subject to garnishment for payment of tax, but belong to creditors: *Shelby v. Tiddy*, 118-792.

8005. Corporation failing to pay taxes; garnishment; penalty. Whenever any corporation doing business in this state shall be delinquent in the payment of any taxes assessed or charged against it, the sheriff may notify any agent or officer of such corporation, or any person indebted thereto, of the amount of taxes due and unpaid by such corporation, and thereupon such agent, officer, or debtor shall pay to such sheriff or tax collector the amount he has in hand for, or of his indebtedness to, such corporation, or so much thereof as will satisfy such taxes and costs. The amount so paid shall be a discharge pro tanto of such agent, or officer, or debtor from his liability to such corporation. Any such agent, officer, or debtor who shall fail to pay over to the sheriff as required by this section shall be liable for such money in civil action to be brought by such sheriff in his name and official capacity; and such officer or agent of such corporation shall also be guilty of a misdemeanor, and fined not less than fifty nor more than five hundred dollars. If any corporation be delinquent for six months in the payment of the taxes lawfully assessed and charged upon or against it or its property, its charter shall be forfeited and a receiver shall be appointed to wind up its affairs in an action to be prosecuted by the attorney-general in the name of the state.

Rev., ss. 2881, 3786; 1901, c. 558, s. 29.

ART. 14. TAX SALES.

Part 1. Sale of Personalty

§006. Personalty first exhausted. The personal property of a taxpayer shall be levied upon and shall be sold for the satisfaction of his taxes before resorting to his real estate, if sufficient personalty subject to levy and sale can be found in the county of the sheriff having the tax list in hand. Upon the service of the notice required by this chapter, that his real estate is to be sold for taxes, it shall be incumbent upon the taxpayer to point out to the sheriff personalty out of which the taxes may be made, or else such taxpayer shall forfeit his rights under this section.

Rev., s. 2884; Code, s. 3688; 1901, c. 558, s. 1.

8007. Levy as under execution. The seizure and sale of personal property for taxes shall be governed by the laws regulating levy and sale under execution.

Rev., s. 2885; Code, s. 3688; 1901, c. 558, s. 1.

8008. What subject to levy. All personal property subject to taxation shall be liable to be seized and sold for taxes, and the personal property of any deceased person shall be liable in the hands of any executor or administrator for any tax due by any testator or intestate; and all transfers of personal property by any taxpayer, made after his taxes are due, by way of gift, or mortgage, or deed of trust, or of assignment for creditors, or bequest by will, or in any other way or for any other purpose than a bona fide sale for value, in the ordinary course of dealing, shall be null and void as to such taxes and shall have no effect upon the rights, powers, and duties of the sheriff to levy upon and sell such property for such taxes: Provided, such levy be made within sixty days after such transfer.

Rev., s. 2886; Code, s. 3682.

Section referred to in *Berry v. Davis*, 158-170.

8009. Fees of sheriff and expenses of sale of personalty and realty. The sheriff shall be entitled to fifty cents for each actual levy and sale of personalty and fifteen cents for each advertisement of such sale, but in no case shall such sums be collected where no levy or sale or advertisement is made. For advertising lands for sale for taxes, twenty cents for each parcel advertised. For making each certificate of the sale and purchase of real estate, and for each deed for real estate, fifty cents. For entering memorandum or redemption on sale book, twenty-five cents. The county commissioners shall allow him in settlement such other sums as he has actually expended which were necessary for the due execution of his duties under this chapter.

Rev., s. 2883; 1903, c. 251, ss. 80, 97; 1901, c. 558, ss. 10, 11; 1917, c. 234, s. 89; 1919, c. 92, s. 89.

Part 2. Sale of Realty

8010. When land is liable. If personal property of any taxpayer, sufficient for the satisfaction of his taxes and subject to levy, is not to be found in the county

of the sheriff having the tax list in hand for collection, it shall be the duty of such sheriff to sell the real estate of such taxpayer, if delinquent in the payment of his taxes, under the directions set forth in this chapter.

Rev., s. 2887; Code, ss. 3688, 3691; 1901, c. 588, s. 1.

Sale of land for taxes before resorting to personal property may render sheriff liable to tax debtor, but does not affect title of purchaser: *Geer v. Brown*, 126-238.

Semble, that sheriff would be liable in damages, as well as to indictment, for his failure to exhaust personalty of tax debtor before selling his land: *Stanley v. Baird*, 118-75.

Where power is given to sheriff to sell land for taxes on condition that it be exercised within a certain time, the legislature cannot, by private act, extend the power, after the time has expired: *Seymour v. Cohen*, 67-346.

Land is not subject to sale for taxes unless it has been properly listed: *Stone v. Phillips*, 176-457; *Rexford v. Phillips*, 159-213. Where real estate was not listed for taxation, an order given tax collector by county commissioners to list it and collect same amounts as in former years invested him with no authority under the act to proceed to a sale; nor was he empowered to collect by sale or compulsion by an order of the board of commissioners allowing party without title to list the land: *Peebles v. Taylor*, 121-38.

In selling lands for taxes, sheriff acts under statutory power, which must be strictly pursued, and he must not only do the acts which are required to bring his sale within the power, but he must do them within time prescribed: *Seymour v. Cohen*, 67-346.

8011. Sale conclusive as to liability. Where actual sales of real estate are made for taxes under the general laws of the state, the taxpayer whose real estate has been sold for taxes shall be precluded thereafter from attacking such sale on the ground that the tax could have been procured from personal property.

1917, c. 234, s. 119; 1919, c. 92, s. 120.

8012. Time and place of sale. The sale of real estate for taxes shall, unless otherwise expressly provided by law, be made at the courthouse door of the county, between the hours of ten o'clock in the forenoon and four o'clock in the afternoon of the first Monday in May of each year, or upon the first Monday of any subsequent month, after giving the required notice of sale, but, if necessary, the sale may be continued from day to day until all the property advertised shall be disposed of. If, for any reason, the sale is not made on the day prescribed, another day may be set by the county commissioners at a regular meeting, and the sale shall be had on such day after advertisement and notice as required by this subchapter.

Rev., s. 2888; Code, s. 459; 1901, c. 558, s. 3; 1919, c. 92, s. 119.

8013. Notice to delinquent. In addition to the advertisement required by the next succeeding section, the sheriff shall, at least twenty days before a sale of real estate for taxes, serve upon each delinquent taxpayer whose real estate is advertised for sale, if such person can be found in the county, a copy of so much of such advertisement of sale as relates to him and his real estate. If such delinquent cannot be found in the county, such notice shall be mailed to him, if his postoffice can be ascertained by the exercise of reasonable diligence, and personal service shall also be made upon his agent, if he have such agent in the county to the knowledge of the sheriff, or upon some person of suitable age and discretion in possession of or residing upon the land or some portion thereof.

Rev., s. 2889; Code, ss. 457, 3691; 1901, c. 558, s. 3.

Notice to delinquent taxpayer of the sale is necessary: *Matthews v. Fry*, 141-586; *Hill v. Nicholson*, 92-24.

It is duty of a mortgagee to pay taxes on mortgaged land if mortgagor fails to do so, and, in case of a sale of land for taxes, he is barred, notwithstanding he has no notice of intended sale by sheriff: *Powell v. Sikes*, 119-231, overruling *Hill v. Nicholson*, 92-24. The lien of tax on land as against a person without notice is generally superior to rights of mortgagor or mortgagee, and it is duty of mortgagee and his assignee to see to the discharge of tax liens as they fall due: *Exum v. Baker*, 115-242; *Wooten v. Sugg*, 114-295.

Tax title derived by a purchaser at sheriff's sale of land listed in the name of the "estate" of one deceased, is defective; the law requires personal service of notice of levy and sale upon delinquent taxpayer: *Morrison v. McLauchlin*, 88-251.

Where evidence shows that sheriff failed to serve notice on delinquent taxpayer as required by section 51 of chapter 169, acts 1897, the presumption arising from the sheriff's deed is rebutted and purchaser at tax sale acquired no title: *Matthews v. Fry*, 141-582.

The failure to give notice by mail to taxpayer is a mere irregularity: *Saunders v. Earp*, 118-275.

When taxes are due and requirements of statute otherwise complied with, a sale now conveys the property, and not simply the interest of delinquent: *Smith v. Proctor*, 139-324 (rendering obsolete on this point *Whitehurst v. Gaskell*, 69-449; *Mackay ex parte*, 84-63, and other cases).

When land held in common is sold for taxes and purchased by the tenant in possession, it is held for the benefit of all: *Smith v. Smith*, 150-81.

8014. Sale advertised. Before any real estate shall be sold for taxes the sheriff shall give public notice of the time, place, and cause of such sale by advertisement at the courthouse door and in some newspaper published in the county, if any there be, for four successive weeks immediately preceding the day of sale. If there be no newspaper published in the county, such advertisement must be posted for four weeks at some public place in each township of the county, except that in which the courthouse is located, in addition to posting at the courthouse door. Such advertisement must contain a notice that all the lands whose owners are delinquent in payment of their taxes of the preceding year will be sold, and shall set out a list of the lands to be sold and the amount of taxes, expenses, and costs due by each delinquent owner, giving his name.

Rev., s. 2890; Code, s. 3691; 1901, c. 558, s. 3.

8015. Manner of sale. All sales of real estate for taxes shall be at public outcry to the highest bidder. All the advertised real estate of each delinquent shall be sold at the same time as one body, and no bid therefor shall be received unless sufficient in amount to discharge all the taxes due by the delinquent, together with all costs and expenses of sale. If no such bid be received, the county, city, or town, as the case may be, shall be deemed the purchaser, and the sheriff shall so record it on his sales book. If any bidder fail to pay the amount of his bid immediately upon his being declared the purchaser, the sheriff shall resell at once if he deem it proper to do so.

Rev., s. 2891; Code, ss. 3693, 3694; 1901, c. 558, ss. 37, 4.

NOTE.—For fees and expenses of sale, see section 8009.

8016. Sheriff failing to attend; selling property not liable for tax. If any sheriff shall fail to attend any sale of lands as required by law in regard to tax sales, either in person or by competent deputy, he shall be guilty of a misdemeanor and liable to a penalty of three hundred dollars, to be recovered by an action in the superior court against the sheriff and his bondsmen. And if such officer or deputy shall sell or assist in selling any real property, knowing the same not to be subject to taxation, or that the taxes for which the same is sold have

been paid, or shall knowingly and willingly sell or assist in selling any real property for payment of taxes to defraud the owner of such real property, or shall knowingly or willingly execute a deed for property so sold, he shall be guilty of a misdemeanor, and be liable to a fine of not less than one thousand nor more than three thousand dollars, or to imprisonment not exceeding one year, or to both fine and imprisonment, and to pay to the injured party all damages sustained by such wrongful act, and all such sales shall be void.

Rev., s. 3790; 1901, c. 558, s. 6.

8017. Record of sales kept. The sheriff shall keep a sales book in which shall be entered and shown what real estate he sells for taxes, the name of the delinquent in whose name such real estate was listed, the amount of the taxes, costs, and expenses for which it was sold, and the name of the purchaser and amount of his bid, where there was a purchaser other than the county, city, or town, as the case may be. If the county, city, or town become the purchaser under the provisions of law, he shall record the fact in such book. A copy of this book, certified by the sheriff, shall be filed with the clerk of the county commissioners, or the city or town authorities, as the case may be, within one year after the sale. Such certified copy shall be prima facie evidence of the truth of the matters therein contained, and of the regularity of the sales therein recorded. When the sheriff makes a deed to any land sold for taxes he shall make an entry to that effect in the sales book opposite the description of the land conveyed.

Rev., s. 2892; 1901, c. 558, ss. 5, 10.

8018. Records sufficient proof of sale. The books and records belonging to the offices of the register or sheriff, or copies thereof properly certified, shall be deemed sufficient evidence to prove the sale of any real property for taxes, the redemption thereof or the payment of the taxes thereon.

Rev., s. 2893; 1901, c. 558, s. 26.

8019. Land listed in wrong name. No sale of real estate shall be void because such real estate was charged in the name of any other person than the rightful owner, if such real estate be in other respects sufficiently described. But no sale of property so listed in the name of the wrong person shall be held valid where the rightful owner has listed the same and paid the taxes thereon.

Rev., s. 2894; 1901, c. 558, s. 25.

A tax deed made in pursuance of a sale of land for taxes listed in name of person other than rightful owner is not void if land be in other respects sufficiently described: *Peebles v. Taylor*, 118-165; *Rexford v. Phillips*, 159-213; *Stone v. Phillips*, 176-457; *Headman v. Comrs.*, 177-261.

Where land belonging to wife was listed for taxation by her husband, and was sold for nonpayment of taxes, no tender to redeem having been made by her, or any one for her or claiming under her, a tender made by husband was ineffectual, he having no "estate or interest" in land, notwithstanding birth of issue: *Eames v. Armstrong*, 146-1.

8020. Irregularities immaterial. No irregularities in making assessments or in making the returns thereof in the equalization of property as provided by law,

or in any other proceeding or requirement of law, shall invalidate the sale of any real estate when sold by the sheriff for delinquent taxes, nor in any manner invalidate the tax levied on any property or charged against any person.

Rev., s. 2895; 1901, c. 558, s. 27.

Certain irregularities which do not invalidate a sale: *Stone v. Phillips*, 176-457. See section 8021.

8021. Irregularities defined. The following defects, omissions, and circumstances occurring in the assessment of any property for taxation, or in the levy of taxes, or elsewhere in the course of the proceedings, up to and including the execution and delivery of the deed for property sold for taxes, shall be taken and deemed to be mere irregularities within the meaning of the next preceding section: The failure of the assessors to take or subscribe an oath or attach one to an assessment roll; the omission of a dollar mark or other designation descriptive of the value of figures used to denote an amount assessed, levied, or charged against any property or the valuation of any property upon any record; the failure to make or serve any notice mentioned in this chapter; the failure or neglect of the sheriff to offer any real estate for sale for delinquent taxes thereon at the time mentioned in the advertisement or notice of such sale; failure of the sheriff to adjourn such sale from day to day, or any irregularity or informality in such adjournment; any irregularity or informality in the manner or order in which real estate may be offered for sale; the failure to assess any property for taxes or to levy any tax within the time provided by law; any irregularity, informality, or omission in any such assessment or levy; any defect in the description, upon any assessment book, tax list, sales book, or other record, of real or personal property assessed for taxation, or upon which any taxes are levied, or which may be sold for taxes, provided such description be sufficiently definite to enable the sheriff, or any person interested, to determine what property is meant or intended by the description, and in such cases a defective or indefinite description, on any book, list, or record, or in any notice or advertisement, may be made definite by the sheriff in the deed by which he may convey such property, if sold for taxes, by inserting in such deed a proper and definite description of the property so defectively or indefinitely described; any other irregularity, informality, or omission or neglect on the part of any person or in any proceedings, whether mentioned in this section or not; the omission of a seal to the sheriff's deed; the neglect or omission to tax or assess for taxation any person or property; the overtaxation of persons or property liable to be taxed.

Rev., s. 2896; 1901, c. 558, s. 28.

Failure to mail notice to delinquent taxpayer is an irregularity: *Sanders v. Earp*, 118-275—as is also failure to mail notice to owner of property before calling for deed: *Geer v. Brown*, 126-238 (both of these decisions were under prior acts not exactly similar to this).

Defective description of the land is an irregularity: *Stone v. Phillips*, 176-457.

8022. Acts of de facto officer valid. In all actions, proceedings and controversies involving the question of title to real property held under and by virtue of a sheriff's certificate of sale for taxes or tax deed, and all acts of assessors, sheriffs, clerks, supervisors, commissioners, and other officers, de facto, shall be deemed and construed to be of the same validity as acts of officers de jure.

Rev., s. 2897; 1901, c. 558, s. 24.

8023. Cancellation of void sales and deeds. Whenever it shall be made to appear to the satisfaction of the sheriff, either before the execution of a deed for real property sold for taxes or upon the deed being returned by the purchaser, that any real estate was sold which was not subject to taxation or upon which the taxes had been paid previous to the sale, he shall make an entry opposite such tract or lot on the record of same that the same was erroneously sold, and such entry shall be evidence of the fact therein stated; and in such cases the purchase money shall be refunded to the purchaser as provided by this chapter. If such deed has been registered, the sheriff may nullify the same by writing on the margin of the register's book, at the page on which the deed appears, that the same is canceled pursuant to this section and for the causes herein set forth.

Rev., s. 2898; 1901, c. 558, s. 22.

8024. Certificate of sale. The sheriff shall give to the purchaser of real estate sold for taxes a written certificate, under his official signature, to the effect and in the form following:

NORTH CAROLINA, COUNTY.

I,, sheriff of the county of, do hereby certify that the following described real estate in said county and state, to wit (describing the same and stating in whose name it was listed on the tax lists), was, on the day of, 19...., duly sold by me, in the manner provided by law for the delinquent taxes of for the year 19...., amounting to dollars, including interest and penalty thereon and the cost allowed by law, when and where (name of the purchaser) purchased said real estate at the price of dollars, he being the highest and best bidder for the same. And I further certify that unless redemption is made of said estate in the manner provided by law, the said, his heirs or assigns, will be entitled to a deed in fee therefor on and after the day of, A. D. 19...., on surrender of this certificate.

In witness whereof, I have hereunto set my hand, this day of, A. D. 19...., Sheriff.

Rev., s. 2899; 1901, c. 558, s. 9.

Presumption arises from certificate of tax sale that all prior proceedings were regular: *Basnight v. Smith*, 112-229. Section referred to in *Townsend v. Drainage Comrs.*, 174-556.

8025. Separate certificates required. The real estate of each delinquent shall be inserted in a separate certificate notwithstanding the fact that the same person may have purchased the real estate of several delinquents. But this shall not apply to lands held in cotenancy or joint tenancy. Such lands may be inserted in one certificate, no matter how many delinquents may be interested therein.

Rev., s. 2900; 1901, c. 558, s. 9.

8026. Certificate to county, city, etc.; right to transfer. When the county or other municipal corporation becomes the purchaser, under the provisions of this chapter, of any real estate sold for taxes, the sheriff shall issue a certificate of purchase in the name of such corporation substantially in the form provided by the two preceding sections. Such certificates shall remain in the custody of the sheriff, and at any time the county commissioners may assign such certificates to any person wishing to buy, for the amount expressed on the face of the certificate and interest thereon at the rate per centum which the taxes were drawing at the time of the purchase, or for the total amount of all tax on such real estate.

Such assignment may be made by the endorsement of the name of the county by the chairman of the board of county commissioners, and such endorsement shall be made when ordered by the county commissioners. The commissioners or other governing body of the municipal corporation other than a county shall have the same right of transfer as is above conferred, such transfer to be made by the mayor or treasurer of such corporation and in its name.

Rev., s. 2901; 1901, c. 558, ss. 37, 39.

Assignee of county commissioners of the certificate of sale only obtains such interest as the county (assignor) possessed, which was a right to foreclosure: *McNair v. Boyd*, 163-478; *Huss v. Craig*, 124-743; *Kerner v. Cottage Co.*, 126-356; *Collins v. Pettitt*, 124-726; *Whitman v. Dickey*, 124-741; *Collins v. Bryan*, 124-738; *Wilcox v. Leach*, 123-74.

A deed made by county commissioners for land bought in by them (in 1899) without foreclosure of certificate, is void: *Smith v. Smith*, 150-81. But see section 8030.

8027. Certificate presumptive evidence of validity. The sheriff's certificate of sale and purchase shall be presumptive evidence of the regularity of all prior proceedings incident to such sale and purchase and of the due performance of all things essential to the validity thereof.

Rev., s. 2902; 1901, c. 558, s. 9.

Part 3. Tax Deeds

8028. Purchaser to give notice. No purchaser or assignee of such purchaser of any real estate, at any sale for taxes or special assessments due either to the state or any county or any incorporated town or city within the same, or at any sale for taxes authorized by the law of this state, shall be entitled to a deed for the real estate so purchased until the following conditions have been complied with, to wit: Such purchaser or assignee shall serve or cause to be served a written or printed, or partly written and partly printed, notice of such purchase on every person in actual possession or occupancy of such land or lot, and also on the person in whose name the same was taxed or specially assessed, if upon diligent inquiry he can be found in the county, and also upon any person, firm, or corporation having a mortgage or deed of trust upon said land or lots recorded in the county where the land is situated, if upon diligent inquiry such person, firm, or corporation can be found, and if he, they, or it cannot upon diligent inquiry be found, then publication shall be made as hereinafter provided, at least three months before the expiration of the time of redemption, in which notice he shall state when he purchased the land or lot, a description thereof, in whose name it was taxed, for what year taxed or specially assessed, and when the time of redemption will expire. If no person is in actual possession or occupancy of such land or lot, and the person in whose name it was taxed or assessed cannot upon diligent inquiry be found in the county, then such person or his assignee shall publish such notice in some newspaper published in such county, and if no newspaper is published in the county, then the newspaper that is published in this state nearest the county-seat of the county in which such real estate is situated, or in some newspaper published in an adjoining county, which notice shall be inserted three

times, the first not more than five months and the last time not less than three months before the time of redemption shall expire. The fee for such publication in a newspaper shall not exceed three dollars for each tract so advertised.

Rev., s. 2903; 1901, c. 558, ss. 15, 17; 1905, c. 431; 1907, c. 950.

The requirements as to giving notice must be complied with by the purchaser: *Sanders v. Covington*, 176-454; *Fowle v. Whitley*, 166-445; *Johnson v. Whilden*, 166-104; s. c., 171-153; *McNair v. Boyd*, 163-478; *Rexford v. Phillips*, 159-213; *Thomas v. Nichols*, 127-319.

Sheriff's deed is only presumptive evidence that notice to owner or delinquent taxpayer has been given and publication made as required, but notices required to be given by purchaser to owner of land must be proved by him: *Matthews v. Fry*, 141-582.

Tax deed is not presumptive evidence that notice required in this section was given: *King v. Cooper*, 128-347.

8029. Affidavit of purchaser. Every person who has purchased any land at a tax sale, or the assignee of such person, by himself or agent, before he shall be entitled to a deed for such land, shall make an affidavit of his having complied with the conditions of this chapter as to giving notice of such purchase, stating particularly the facts relied on as such compliance, which affidavit shall be presented to the person authorized by law to execute such tax deed, to be by such officer delivered to the register of deeds and entered on the record of his office and carefully preserved among the files of his office, which record or affidavit shall be prima facie evidence that such notice had been given. The register shall be entitled to the same fee therefor as is allowed by law for registering deeds. The conditions of this and the next preceding section shall not be required when any county or incorporated town or city shall become the purchaser.

Rev., s. 2904; 1901, c. 558, s. 16.

The affidavit is necessary to obtain a deed: *Sanders v. Covington*, 176-454; *Rexford v. Phillips*, 159-213.

8030. Deed; when and by whom made. At any time after one year, and within two years, from the day of sale of any real estate for taxes, and upon demand of the purchaser and his production of the certificate of such sale and purchase, the sheriff shall, if the real estate has not been previously redeemed, as allowed by law, execute a conveyance to the purchaser, his heirs or assigns, for the real estate described in the certificate. If the certificate be lost, such conveyance may be made by the sheriff upon his being satisfied of such loss. When the sheriff has made due sale of land for taxes and dies before executing a deed thereto, or when a sheriff dies, and, in collecting taxes due on lists that were in his hands for collection, his executor or administrator, or any one acting for the sureties on his bond, shall have made sale for taxes as contemplated by law in all such cases, his successors in office shall execute a deed or conveyance to the person entitled to the same. If the county or other municipal corporation be the purchaser or holder of the certificate, the sheriff shall execute such deed upon demand of the county commissioners or governing board of such other municipal corporation.

Rev., s. 2905; 1901, c. 558, s. 18.

See section 995.

THE INTEREST CONVEYED BY TAX DEED; FORCE AND PRIORITY OF THE TITLE. When taxes are due and requirements of statute otherwise complied with, a sale now conveys the property, and not simply interest of delinquent: *Smith v. Proctor*, 139-324.

The purchaser at tax sale may demand a deed or proceed by foreclosure: *Headman v. Comrs.*, 177-261; *Townsend v. Drainage Comrs.*, 174-556.

Prior to 1887, a sheriff's deed under a sale for taxes was (without other evidence) only color of title and not effective, unless aided by open, notorious and continuous possession for statutory period: *Worth v. Simmons*, 121-357.

Under this section a tax deed may be color of title, though without a seal, and three years possession would bar right to redeem: *Ruark v. Harper*, 178-249; *Kivett v. Gardner*, 169-78; *Jordan v. Simmons*, 169-140. The tax deed as color of title is not affected by failure of sheriff to bid in the land for the county: *Greenleaf v. Bartlett*, 146-495.

Tax title which conveys only interest of life tenant is not color of title against remaindermen, nor is possession thereunder adverse until death of life tenant: *Smith v. Proctor*, 139-314. A sale and conveyance by sheriff under revenue act of 1874-5 of the lands of a life tenant for default in payment of taxes on his part does not operate to convey interest of remaindermen: *Ibid.*

Under revenue act of 1891 sheriff's deed for land sold for taxes is good as against a mortgage recorded before sale, but after levy of taxes: *Powell v. Sikes*, 119-231.

Where prior to listing of land for taxes, for nonpayment of which the land was sold, owner had conveyed property to a trustee in trust to pay a debt, tax collector's deed divested title of trustor, trustee, and cestui que trust, and was superior to deed of purchaser at trustee's sale: *Lyman v. Hunter*, 123-508.

VALIDITY OF THE TAX DEED. Tax deed, signed and executed by one who was sheriff of county at time of sale of land for taxes, after expiration of his term of office, as "ex-sheriff," is authorized by section 995, and is to that extent valid: *Mfg. Co. v. Rosey*, 144-370.

Tax deed made in pursuance of sale of land for taxes listed in name of person other than rightful owner is not void if land be in other respects sufficiently described: *Peebles v. Taylor*, 118-165.

Sale of land for taxes will not pass title unless notice of levy and sale has been first served upon "delinquent" as directed by revenue law: *Hall v. Nicholson*, 92-24—but a mortgagee is not entitled to notice, *Powell v. Sikes*, 119-231.

Tax title derived by purchaser at sheriff's sale of land, listed in name of "estate" of one deceased, is defective; the law requires personal service of notice by levy and sale upon delinquent taxpayer: *Morrison v. McLauchlin*, 88-251.

Where nonobservance of statutory requirements is known to purchaser, or where he has participated in their violation, he will get no benefit from his purchase: *Hays v. Hunt*, 85-303.

Where land has been sold for taxes and bid off by county commissioners, but is redeemed for owners by payment of taxes, interest and costs, although some time after time limited by law, a subsequent order to tax collector to make a deed to another party is invalid, and deed is of no effect: *Merrimon v. Lyman*, 124-434.

A description which may be aided by parol evidence is sufficient to pass title, as between taxpayer and purchaser at tax sale: *Fulcher v. Fulcher*, 122-101; *Stone v. Phillips*, 176-457.

Under this section, a county may purchase land at tax sale and take a deed without resorting to foreclosure: *Headman v. Comrs.*, 177-261; *Kivett v. Gardner*, 169-78. For former law, see *McNair v. Boyd*, 163-478; *Smith v. Smith*, 150-81.

Wife may purchase husband's land at tax sale: *Jordan v. Simmons*, 169-140—but husband cannot acquire such title against the wife, though he may do so as against others who are tenants in common with the wife, *Ibid.*; *Ruark v. Harper*, 178-249.

One tenant in common, holding possession for all, cannot acquire title by tax sale as against his cotenants: *Smith v. Smith*, 150-81.

A tax deed made by a sheriff more than "two years from the day of sale of the real estate for taxes" is void: *Mfg. Co. v. Rosey*, 144-370.

Where owner of land sold for taxes dies before sheriff makes deed, the validity of the deed is not thereby affected: *McMillan v. Hogan*, 129-314.

Title good though personalty was not first exhausted: *Stanley v. Baird*, 118-75.

Deed valid though sheriff did not mail notice to owner: *Sanders v. Earp*, 118-275.

Sheriff's deed made to purchaser of land for taxes within the twelve months after the sale is void and passes no title: *Ward v. Phillips*, 89-215.

Where tract of land was sold for taxes on 3d day of May, 1892, a deed made on 3d day of May, 1893, by sheriff, in pursuance of such sale is void: *Burgess v. Burgess*, 117-447.

Where there was a mistake in the payment of taxes as to one tract of land, and this was afterwards sold by the sheriff without notice to the owner, the sale conveyed no title: *Wooten v. White*, 125-403.

One relying upon a tax deed as title must show compliance with statutory requirements; there is no presumption in favor of it other than that provided in the statute: *Warren v. Williford*, 148-474.

AS TO ACTIONS INVOLVING TAX TITLES. As to presumption arising from tax deed, see section 8034 and annotations thereunder. As to the requisites of a seal to deed, see section 8031. As to title acquired by assignment of certificate from county commissioners, see section 8026. As to what are considered irregularities, see section 8021.

Defendant seeking to defeat tax title must show that the taxes for the land in question were duly paid: *Moore v. Byrd*, 118-688; *McMillan v. Hogan*, 129-314; see section 8034.

Under act of 1887 (and subsequent acts) the onus is on claimant of land, not purchaser: *Fulcher v. Fulcher*, 122-101.

In action to set aside tax deed as a cloud on title, it was not necessary that complaint allege that all taxes had been paid, provided evidence of that fact was introduced at trial: *Beck v. Meroney*, 135-532.

In action to remove cloud from title plaintiff need not prove title out of state: *Edwards v. Lyman*, 122-741.

Where complaint alleges that plaintiff was seized and possessed of land sold for taxes, and answer admits that plaintiff was "possessed" thereof, such admission is sufficient evidence of title within purview of revenue act of 1895: *Wooten v. White*, 125-403.

Recitals in, not sufficient alone to sustain title: *Stewart v. Ferguson*, 133-276.

Section 74 of chapter 137, acts of 1887 (which is the same as section 66, ch. 119, acts of 1895) is not in conflict with the constitution in providing that, in actions to recover land on title based on tax deed, person claiming adversely to tax deed must, in order to defeat tax title, prove either that property was not subject to taxation for year named in deed or that taxes had been paid at time of sale: *Moore v. Byrd*, 118-688.

It is not allowable to a defendant in the trial of an action to recover land to prove an equitable interest for amount bid for land at tax sale, as evidenced by an invalid deed of sheriff, where he did not set up such equity in his answer: *Patterson v. Galliher*, 122-511.

Under revenue act, chapter 119, section 69, laws 1895, an action for recovery of land sold for taxes is barred by lapse of three years after such sale, unless owner be under legal disability: *Lyman v. Hunter*, 123-508; see section 441.

Where evidence shows that sheriff failed to serve notice on delinquent taxpayer as required by section 51 of chapter 169, acts of 1897, presumption arising from sheriff's deed is rebutted, and purchaser at tax sale acquired no title: *Matthews v. Fry*, 141-582.

An action to set aside a tax deed as a cloud upon title is not barred within three years from sale: *Beck v. Meroney*, 135-532; see section 441.

Person who lists land of another in his own name for taxes, allows it to be sold for taxes, and becomes purchaser and takes sheriff's deed, simply pays his own taxes, and acquires no title under the deed: *Griffith v. Silver*, 125-368.

Where taxes, interest and costs, for which land was sold, were paid by tax debtor during year allowed for redemption, the tax deed, valid on its face, constituted a cloud on the title: *Beck v. Meroney*, 135-532.

When answer contains an admission that land had been advertised and sold for taxes and bought by plaintiff, through an agent, inquiries of clerk if there was any record in his office of lands levied upon for sale for taxes, and of sheriff, if he had sold land for taxes, and of editor of county newspaper in regard to advertisement of tax sales, were properly excluded: *Geer v. Brown*, 126-238.

8031. Form of tax deed. Deeds made by the sheriff for real estate sold for taxes shall be substantially in the following form:

NORTH CAROLINA, COUNTY.

Whereas, at a sale of real estate for the nonpayment of taxes, made in the county of, on the day of, 19...., the following described real estate which was listed in the name of, in township of said county, was sold, to wit (here place description of real estate conveyed); and,

Whereas, the same not having been redeemed from such sale, and it appearing that the holder of the certificate of purchase of said real estate has complied with the laws of North Carolina necessary to entitle (insert the name of grantee) to a deed of said real estate:

Now, therefore, I,, sheriff of said county of, in consideration of the premises and by virtue of the statutes of North Carolina in such cases provided, do hereby grant and convey unto in fee simple the said real estate hereinbefore described, subject, however, to any right of redemption provided by law.

Given under my hand and seal, this day of, A. D. 19....
 Rev., s. 2906; 1901, c. 558, s. 19., Sheriff. (Seal.)

Section 65 of chapter 119, acts of 1895, requiring attestation clause of a sheriff's deed for land sold for taxes to be in form as follows: "Given under my hand and seal, this----- day of -----, A. D. -----, -----, sheriff," does not dispense with necessity for a seal: *Patterson v. Galliher*, 122-511.

Failure of sheriff to affix seal to deed for land sold for taxes is not an irregularity which can be cured by section 74, chapter 119, acts of 1895: *Ibid*.

Where sheriff's deed has been lost and copy on registration books is offered in evidence, but has no seal thereto, the law will not presume from words "Given under my hand and seal" that original bore a seal: *Strain v. Fitzgerald*, 128-396.

Where a pretended deed for land sold for taxes is invalid for want of a seal, it is not incumbent on one claiming against it to prove that property covered by it was not subject to taxation for years named in deed, or that taxes had been paid before sale: *Patterson v. Galliher*, 122-511.

See section 3353.

8032. Separate deeds required. The real estate of each delinquent shall be conveyed by a separate deed, notwithstanding the fact that the same person may have purchased the real estate of several delinquents. This shall not apply to lands held in cotenancy or joint tenancy. Such lands may be conveyed by one and the same deed, no matter how many delinquents may be interested therein.

Rev., s. 2907; 1901, c. 558, s. 10.

8033. Tax deeds registered. All deeds made pursuant to this chapter by the sheriff shall be registered in the same manner as other conveyances of real estate, and shall vest in the grantee, his heirs and assigns, the title of the property therein described.

Rev., s. 2908; 1901, c. 558, s. 19.

8034. Tax deed presumptive evidence. Deeds made by a sheriff for real estate sold for taxes shall be presumptive evidence in all courts of this state, in all controversies, actions, and proceedings in relation to the rights of the purchaser, his heirs or assigns, to the lands thereby conveyed, of the following facts:

1. That the real estate conveyed was subject to taxation for the year or years stated in the deed.
2. That the taxes were not paid at any time before the sale.
3. That the real property conveyed had not been redeemed from the sale at the date of the deed.
4. That the property had been listed and assessed.
5. That the taxes were levied according to law.
6. That the property was sold for taxes, as stated in the deed.
7. That all notices of such sale required to be served upon the delinquent or others had been duly served, and due advertisement of the sale had been made.

And such deeds shall be conclusive proof of the following facts:

1. That the manner in which the listing, assessment, levy, and sale were conducted was in all respects as the law directed.

2. That the grantee named in the deed was the purchaser or his assignee.

3. That all the prerequisites of the law were complied with by all the officers who had or whose duty it was to have had any part or action in any transaction relating to or affecting the title conveyed or purporting to be conveyed by the deed, from the listing and valuation of the property up to the execution of the deed, both inclusive, and that all things whatsoever required by law to make a good and valid sale and to vest the title in the purchaser were done, except in regard to the points named in this section, wherein the deed shall be presumptive evidence only.

And in all controversies, actions, and proceedings involving the title of real property claimed and held under and by virtue of a deed made substantially as required by this chapter, the person claiming title adverse to the title conveyed by such deed shall be required to prove, in order to defeat the title which such deed purports to convey, either that such real property was not subject to taxation for the year or years named in the deed or that the taxes had been paid before the sale, or that the property had been redeemed from the sale according to the provisions of this chapter, and that such redemption was had or made for the use and benefit of the persons having the right of redemption under the laws of this state, or that there had been an entire omission to list or assess the property, or to levy the taxes, or to sell the property. No person shall be permitted to question the title acquired by a sheriff's deed made pursuant to this chapter without first showing that he or the person under whom he claims title had title to the property at the time of the sale, and that all taxes due upon the property have been paid by such person or the persons under whom he claims title. But such deeds shall not pass title where the taxes for which the sale was had had been paid in full prior to such sale. And in all cases where the owner of lands sold for taxes shall resist the validity of such tax title, such owner may prove fraud committed by the officer selling the same, or in the purchaser, and if such fraud is established, such sale and title shall be void. No action for the recovery of real property sold for the nonpayment of taxes shall lie unless the same be brought within three years after the sheriff's deed is made as above provided: Provided, that where the owner of such real property sold as aforesaid at the time of such sale be a minor or insane or a convict in the penitentiary, three years after such disability shall be removed shall be allowed such person, his heirs or legal representatives, to bring action.

Rev., s. 2909; 1901, c. 558, s. 20.

See, also, sections 407, 441. In the absence of statutory provision—one claiming land under tax sale must show that delinquent taxpayer was owner of land at time of sale (or when lien for the taxes attached), that it had been duly listed and that taxes were assessed against it and are due thereon, and that all of the existing prerequisites to sale were observed: *Shingle Co. v. Lumber Co.*, 178-221; *Land Co. v. Board of Ed.*, 101-35 (many cases holding likewise were based upon statutes enacted prior to 1887, and are now obsolete).

Under the law since 1887 the tax deed is conclusive evidence of the regularity of matters of routine and presumptive evidence of all other matters: *Board of Education v. Remick*, 160-563; *Jones v. Schull*, 153-517; *Collins v. Pettitt*, 124-729; *Lyman v. Hunter*, 123-508; *Powell*

v. Sikes, 119-231; Moore v. Byrd, 118-688; Sanders v. Earp, 118-275; Peebles v. Taylor, 118-165; Stanly v. Baird, 118-75; Basnight v. Smith, 112-229.

Deed of sheriff for land sold for taxes is presumptive evidence of regularity of the sale: McMillan v. Hogan, 129-314.

Tax deed is not presumptive evidence that notice required of purchaser under acts 1897, ch. 169, secs. 64 and 65, was given: King v. Cooper, 128-347.

Notwithstanding conclusive presumptions enumerated in statute in support of tax title, it is permissible to show in evidence that plaintiff was assignee of county of certificate executed by the tax collector to the county: Wilcox v. Leach, 123-74.

Evidence that land sold for taxes had never been listed or assessed rebuts the presumption raised by section 72 of the act of 1889 that sheriff's deed shows a proper listing and assessment: Peebles v. Taylor, 121-38; see, also, Stone v. Phillips, 176-457; Greenleaf v. Bartlett, 146-495.

Collection of taxes upon real estate being in the nature of a proceeding in rem, and each tract of land being under a liability, which it cannot escape, to contribute its pro rata to the support of the government, it is competent for the legislature to make the deed executed by sheriff to one who has purchased under the state's preferred lien a prima facie title: Moore v. Byrd, 118-688.

Since statute makes sheriff's tax deed prima facie evidence of title, purchaser, as plaintiff in ejectment, is entitled to recover upon proof of the tax deed conveying the land, if defendant introduces no evidence of his title and of his having paid taxes for which land was sold: Moore v. Byrd, 118-688.

Sheriff's deed for land sold for taxes is only presumptive evidence of due publication, and may be controverted by the tax debtor, in a suit by the purchaser. Want of notice through the mails is only an irregularity, not affecting title of purchaser: Geer v. Brown, 126-238.

Who may question tax title, see Townsend v. Drainage Comrs., 174-556; Eames v. Armstrong, 146-1. The purchaser at tax sale must comply with statute as to giving notice: Headman v. Comrs., 177-261; McNair v. Boyd, 163-478; Rexford v. Phillips, 159-213.

To set aside a tax deed, plaintiff must comply with the statute by showing his title, payment of taxes, and rebut the statutory presumption as to regularity: Ruark v. Harper, 178-249; McMillan v. Hogan, 129-314; Moore v. Byrd, 118-688. But presumption as to compliance with the statute does not arise in case of a void deed, nor need the owner show that the land was not subject to taxation nor that the tax had been paid: Rexford v. Phillips, 159-213.

Part 4. Remedies of Purchaser at Tax Sales

8035. Adjustment on sale by mistake. When by mistake or wrongful act of the sheriff real estate has been sold on which no tax was due at the time, or whenever land is sold in consequence of error in describing such land in the tax receipt, the county or other municipal corporation shall reimburse the purchaser by paying to him the amount of principal and costs by him expended in such purchase, with interest thereon at six per centum per annum; and the sheriff shall be liable to the county, or other municipal corporation, upon his tax bond, for all amounts so expended by it, or the purchaser and assigns may recover such amount and interest directly from the sheriff in an action upon his tax bond. But the sheriff and his sureties in all such cases as are provided for in this section shall be liable only for the wrongful acts of the sheriff and his deputies. Any amount paid by the county under this section for state taxes shall, on proper certificate from the chairman of the board of county commissioners, be allowed by the auditor and paid by the state treasurer.

Rev., s. 2910; 1901, c. 558, s. 21.

8036. Lien of purchaser. The purchaser at a sale for taxes, and his heirs and assigns, shall have a lien on the real estate by him purchased at such sale for the amount of the purchase money paid and all interest, penalties, costs, and charges

allowed him by law; and if, after his purchase, he pays any taxes levied upon or which constitute an encumbrance upon such real estate, whether assessed before or after such purchase, he shall have a lien for all sums so paid out and for all interest, penalties, costs, and charges allowed him by law.

Rev., s. 2911; 1901, c. 558, s. 9.

Purchaser of land at a tax sale under statute, subsequently acquiring an invalid title by reason of insufficient description, or void for not having been made within the statutory time, is entitled to have amount he has paid therefor declared a lien on land in his favor: *Mfg. Co. v. Rosey*, 144-370.

8037. Purchaser may foreclose. Every holder of a certificate of sale of real estate for taxes shall be subrogated to the lien of the state and of the county or other municipal corporation, for the taxes for which such real estate was sold, and, instead of demanding a deed for such real estate under the provisions of this chapter, shall be entitled to a judgment for the sale of such real estate for the satisfaction of whatever sums may be due to him upon such certificate of sale and for any other amounts expended by him upon any other such certificate of sale of such real estate, or for taxes paid which were a lien upon such real estate, whether paid prior or subsequent to the acquisition of such certificate of sale. Such relief shall be afforded in an action in the nature of an action to foreclose a mortgage, which action must be commenced within two years from the date of the last certificate of sale held by the plaintiff. Such action shall be governed in all respects, as near as may be, by the rules governing actions to foreclose a mortgage. Any one who has paid taxes on the subject-matter of the action, or who holds a certificate of sale thereof, may be made a party and his rights enforced therein.

In such action the plaintiff must show that he gave ten days written notice of his intention to commence the same to the owner or occupant of the real estate which it is sought to sell; and in the complaint filed in such action each certificate of sale held by the plaintiff and each sum expended by him for taxes on such real estate shall be set out as a separate cause of action. Inability to find the owner or occupant in the county shall excuse a failure to notify him of plaintiff's intention to sue.

The holder of a deed for real estate sold for taxes shall be entitled to the remedy provided by this section, if he elects to proceed thereunder. He must commence such action within two years from the last deed or certificate of sale held by him.

Every county or other municipal corporation shall have the right to foreclose for taxes under the provisions of this section, and it shall be the duty of its commissioners or other governing body or officials to institute and diligently prosecute such actions for all taxes on real estate for which it holds tax sale certificates or deeds remaining unredeemed as much as four years from the dates of such instruments. No such actions by such corporations shall be barred by the lapse of time as is above provided in this section, or by law for other actions, but only by the lapse of five years from the delivery of the certificate of sale or deed sought to be foreclosed.

In every action brought under this section, whether by a private individual or by the county or other municipal corporation, or any other corporation, the plaintiff shall, except in cases otherwise provided by law, be entitled to recover interest at the rate of twenty per centum per annum on all amounts paid out by

him, or those under whom he claims, and evidenced by certificates of tax sale, deed under tax sale, and tax receipts. Such interest shall be computed from date of each payment up to the time of redemption or final judgment, and shall be added to the principal of the final judgment, which judgment shall bear interest as in other cases.

Rev., s. 2912; 1901, c. 558, ss. 34, 35, 36, 44.

An individual purchaser at tax sale, or his assignee, may proceed by foreclosure, or demand a fee-simple deed from sheriff or tax collector after the time of redemption is past: *Wilcox v. Leach*, 123-74; *Townsend v. Drainage Comrs.*, 174-556.

Where land is sold for taxes and bid in for county, the county becomes mortgagee, and must collect by foreclosure: *Kerner v. Cottage Co.*, 126-356.

Where land is sold for taxes and county buys and takes sheriff's certificate, the interest acquired is that of mortgagee, and assignee of such certificate acquires same interest and, although receiving the sheriff's deed after time of redemption, in order to complete his title must resort to foreclosure: *Huss v. Craig*, 124-743; *Kerner v. Cottage Co.*, 126-356; *Collins v. Pettitt*, 124-726; *Wilcox v. Leach*, 123-74; *Collins v. Bryan*, 124-738; *Whitman v. Dickey*, 124-741. That county may also take a deed, see section 8030.

Part 5. Redemption from Tax Sales

8038. Manner of redemption. The owner or occupant of any land sold for taxes, or any person having a lien thereon or any interest or estate therein, may redeem the same, at any time within one year after the day of such sale, by paying the sheriff for the use of such purchaser, his heirs or assigns, the sum mentioned in his certificate, with interest thereon at the rate of twenty per centum per annum from the date of purchase, together with all other taxes subsequently paid, whether for any year previous or subsequent to such sale, and interest thereon at the same rate from the date of such payment, together with all costs and expenditures made or incurred in carrying out the provisions of this chapter. The sheriff shall enter a memorandum of the redemption in the list of sales and give a receipt therefor to the person redeeming the same, for which he may charge a fee of twenty-five cents, to be paid by the person redeeming, and shall hold the redemption money paid, subject to the order of the purchaser, his agent or attorney. But if any such purchaser, other than a county or other municipal corporation, shall suffer such real estate to be again sold for taxes, he shall be entitled to only ten per cent interest, instead of twenty per cent, as allowed in this and the next preceding section. Infants, idiots, and insane persons may redeem any land belonging to them within one year after the expiration of such disability on like terms as if the redemption had been made within one year from the date of said sale and from the date of each subsequent payment of taxes thereon at the rate of twenty per centum per annum on the several amounts so paid by the purchaser until redemption.

Rev., s. 2913; 1901, c. 558, ss. 11, 12.

To be entitled to redeem, the owner must pay or tender, in apt time, the tax with interest and costs, and show prima facie title in himself: *Headman v. Comrs.*, 177-261; *Townsend v. Drainage Comrs.*, 174-556; *Lumber Co. v. Pearce*, 166-588; *Green v. Dunn*, 162-340.

Where tax debtor paid amount demanded by sheriff to redeem land from tax sale, such payment constituted a redemption, though sheriff erroneously computed amount due: *Beck v. Meroney*, 135-532.

In order to entitle a minor to an extension of time for redemption of land sold for taxes, beyond statutory period, he must have been owner of property at time of sale: *McMillan v. Hogan*, 129-314.

Where owner of land has until a certain day to redeem land sold for taxes, a tender of tax on that day by owner, or agent, is in time: *Thomas v. Nichols*, 127-319.

Where land belonging to wife was listed for taxation by her husband and was sold for non-payment of taxes, no tender to redeem having been made by her, or any one for her or claiming under her, a tender made by husband was ineffectual, he having no "estate or interest" in the land, notwithstanding birth of issue: *Eames v. Armstrong*, 146-1.

Where owner of land pays sheriff the taxes, costs and interest on land sold for taxes, and sheriff tenders money to purchaser, it is sufficient, though payment was made to sheriff by check: *Beck v. Meroney*, 135-532.

A remainderman has two years in which to redeem from a tax sale, and this applies to taxes of the city of Greensboro: *Tiddy v. Graves*, 127-502.

8039. To whose benefit it inures. Any redemption made shall inure to the benefit of the person having the legal or equitable title to the property redeemed, subject to the right of the person making the same to be reimbursed by the person benefited, which reimbursement is hereby made a condition precedent to the vesting of any interest or estate, under the benefits of this section, in the real estate redeemed in the person whose duty it is to make such reimbursement.

Rev., s. 2914; 1901, c. 558, s. 11.

When land is sold for taxes in this state the purchaser, during time allowed for redemption, has a statutory lien upon the land for taxes, costs and interest; but, when taxes and charges are paid within year allowed for redemption, lien is discharged by payment: *Beck v. Meroney*, 135-534.

In selling lands for taxes, sheriff acts under statutory power which must be strictly pursued, and he must not only do the acts which are required to bring his sale within the power, but he must do them within time prescribed: *Seymour v. Cohen*, 67-346.

ART. 15. SHERIFF'S SETTLEMENT OF TAXES

Part 1. Settlements With State Treasurer

8040. Record of settlement of taxes kept. Every sheriff shall keep a record of the taxes collected by him from the clerk of the court, register of deeds, and under schedule B of license taxes in this chapter. A suitable book for the purpose shall be provided by the state auditor for recording all forfeitures, arrears from insolvents, double taxes and taxes on unlisted subjects; and on the first Monday in December in each year the sheriff shall deliver, on oath, to the board of commissioners a statement setting forth all sums received to that date not previously accounted for, the date of such receipts, the person from whom received, the amount received from each person, the subjects on which received, and the aggregate amounts, accompanied by an affidavit taken and subscribed before the clerk of the commissioners and attested by him, that the statement is correct, and that no receipts have been omitted; and the register of deeds shall record the same in a book to be kept for that purpose, and shall, before the second Monday in December, send an abstract of such statement, with the affidavit, to the state auditor, on a blank to be furnished by the state auditor, record the same in a book kept in his office for that purpose, and keep a copy of the same in a conspicuous place in the courthouse until the first day of January next ensuing.

Rev., s. 5244; 1917, c. 234, s. 89; 1919, c. 92, s. 100.

8041. How insolvents allowed. No tax due from insolvents shall be credited to the sheriff in settlements with the state auditor except such as shall be allowed by the board of commissioners, a list whereof, containing the names and amounts and subscribed by the sheriff, shall be returned by him to the board of commissioners, and the same shall be allowed only on his making oath that he has been at the dwelling-house or usual place of abode of each of the taxpayers and could not there or elsewhere in the county find any property wherewith to discharge his taxes or such part thereof as is returned unpaid, and that the persons named in the list were insolvent at the time when by law he ought to have endeavored to collect the taxes. Such list shall be recorded in the commissioners' docket and a copy thereof shall be returned to the state auditor on or before the day of the settlement of the sheriff with the treasurer.

1917, c. 234, s. 89; 1919, c. 92, s. 89.

8042. Time and manner of settlement. The sheriff or other accounting officer shall, on or before the second Monday of January in each year, settle his state tax account with the commissioners of his county and pay the amount for which said sheriff or collector is liable to the treasurer of the state, in such manner or at such place as he shall direct, on or before the third Monday of said month: Provided, the state treasurer may extend the time on a sufficient amount to cover the state tax on the land sales in each county to the first Monday in May. The commissioners shall forthwith report to the state auditor the amount due from such accounting officer, setting forth therein the net amount due to each fund; and the treasurer, upon a statement from the state auditor, shall open an account against such officer and debit him accordingly. Upon the failure of the board of county commissioners to make this report to the state auditor on or before the third Monday of January of each year, or if a report has been filed which is not correct and the commissioners fail to file an amended and corrected report within thirty days after being notified so to do by the state auditor, the commissioners of such county shall each personally be liable to a penalty of one hundred dollars, and it shall be the duty of the state auditor forthwith to institute an action in the county of Wake to enforce the same. The sheriff or tax collector, in making his settlements as aforesaid, shall file with the commissioners a duplicate of the list required in this chapter. In such settlement the sheriff or other officer shall be charged with the amount of public tax as the same appears by the abstract of the taxables transmitted to the state auditor; also with all double taxes on unlisted property by him received, and with other tax which he may have collected or for which he is chargeable. The state auditor shall give to each sheriff or tax collector a certified statement embracing the subjects of taxation contained in both lists and the amount of tax on each subject which the sheriff or tax collector shall deposit with the clerk of the commissioners of his county for public inspection. The sheriffs and tax collectors shall receive five per cent on all taxes collected by them for state, county, township, school district, or other purposes whatsoever, up to the sum of fifty thousand dollars, and upon all such sums so collected by him in excess thereof he shall receive two and one-half per cent commission, and the sheriffs or tax collectors shall receive for their own use, in addition to other fees or salary received by them, commission of five per cent on all privilege and license taxes collected under schedule B of the revenue

act, and any provision in any local act in conflict with this provision is hereby repealed. All laws and clauses of laws, whether general or special, in conflict herewith are hereby repealed: Provided further, that this section shall not apply so as to affect the compensation of the sheriff or tax collector of Buncombe county as fixed by private statute.

Rev., s. 5245; 1917, c. 234, s. 101; 1919, c. 92, s. 101.

While the office of sheriff is a constitutional one, yet the regulation of fees is within the control of the legislature, and same may be reduced during term of the incumbent: *Comrs. v. Stedman*, 141-448.

Where this section fixes the commissions to be paid to the sheriff at five per cent on all taxes, etc., up to the sum of fifty thousand dollars, and upon all sums in excess thereof at two and one-half per cent, the direction to the auditor to deduct five per cent cannot, by implication, repeal the clearly expressed limitation upon the commissions given sheriff, and this is clearly an inadvertence: *Comrs. v. Stedman*, 141-448.

A sheriff is entitled to commissions for the collection of school tax: *Board v. Comrs.*, 137-63.

A sheriff whose term expires is entitled to collect the taxes on the lists in his hands and to receive commissions therefor, notwithstanding the office has been placed upon a salary basis for his successor: *Comrs. v. Bain*, 173-377; but he receives only the salary if reelected, *Mills v. Deaton*, 170-386.

8043. Deductions allowed sheriff. The state auditor, in making the settlement of the amount due from the sheriff or tax collector aforesaid, shall deduct from the list returned—

1. Taxes on personal property certified by the clerk of the commissioners of the county, by order of the commissioners, to be insolvent and uncollectible.
2. All overpayments made in former settlements by reason of any error in the clerk's abstracts of taxables.
3. The commission allowed by law.

Rev., s. 5246; 1917, c. 234, s. 102; 1919, c. 92, s. 102.

The sheriff cannot use as a set-off or counterclaim against his liability for taxes a claim which he holds against the county: *Comrs. v. Hall*, 177-490; *Graded School v. McDowell*, 157-316.

8044. Sheriff's compensation for settlement. For his settlement with the state treasurer the sheriff or tax collector shall be allowed by said board of commissioners, and deducted from the amount due the state, three dollars for each day he may be actually necessarily engaged therein with the commissioners at the county-seat.

Rev., s. 5247; 1917, c. 234, s. 103; 1919, c. 92, s. 103.

8045. Penalty for failure to settle. In every case of failure by the sheriff or other accounting officer to settle his account within sixty days from the time prescribed by section 8042 for such settlement, and to take the oath required in his settlement and pay the amount due to the treasurer, the state auditor shall forthwith report to the treasurer the account of such sheriff or officer, as shown by abstract of listed and unlisted taxables furnished by the register of deeds or auditor for such county, deducting therefrom for commissions, but adding thereto one thousand dollars and ten per centum of the amount of taxes with which said sheriff is charged for the amount of taxes supposed not to appear in the list transmitted by the register of deeds or auditor, and furnish him a copy of the

official bond of the said officer and his sureties; and if the whole amount be not paid, the treasurer, on motion of the solicitor in superior court of Wake county, before the clerk thereof, within thirty days after default shall have occurred, shall recover judgment against him and his sureties, without other notice than is given by the delinquency of the officer; and to the end that obligations and names may be known, the clerk of the superior court shall, on or before the second Monday in each year, transmit to the state auditor a copy, certified under the seal of the court, of the bond of the sheriff and his sureties, upon pain for his default of forfeiting to the state one thousand dollars, which the state auditor shall and is hereby specially charged to collect in like manner and at such times as is provided in this section.

Rev., s. 5248; 1917, c. 234, s. 104; 1919, c. 92, s. 104.

The act of assembly authorizing the summary method of obtaining judgment against sheriff who is delinquent in settling state taxes is constitutional, and the settled law of this state: *Worth v. Cox*, 89-44; *Prairie v. Jenkins*, 75-545; *Oates v. Darden*, 5-500.

Demand is not necessary before suit by the county treasurer on a sheriff's bond, as sheriff is required by law to settle on or before a certain day: *McGuire v. Williams*, 123-349; *Prairie v. Jenkins*, 75-545.

8046. Penalties may be released. The treasurer of the state, with the advice and approval of the attorney-general, is hereby authorized, when in the judgment of these officers it may be best to secure the interest of the state and will not lose any lien held by the state, to grant indulgence to defendants in execution and relinquish penalties upon payment of amount of dues owing to the state; and likewise to bid for in behalf of the state and purchase property of said defendants when deemed necessary to secure the payment of the dues.

Rev., s. 5252; 1917, c. 234, s. 106; 1919, c. 92, s. 106.

8047. Sheriff may recover overpayment. If a sheriff or tax collector shall, in consequence of an error in the abstract of taxes sent to the state auditor, or otherwise, be charged with more than the true amount with which he should be chargeable, and pay the amount so charged in excess to the treasurer of the state, the auditor shall, upon the certificate of the board of commissioners setting forth the nature of such error, give his warrant upon the treasurer of the state for the amount so paid in excess, and the treasurer shall pay the same.

Rev., s. 5261; 1917, c. 234, s. 80; 1919, c. 92, s. 80.

The errors for which deduction is to be made under this section consist of mistakes in abstract of taxables, and not errors made in former settlements: *Comrs. v. Hall*, 177-490, and cases cited.

Part 2. Settlement of County Taxes

8048. Time for settlement of county taxes. The sheriff or tax collector shall pay the county taxes to the county treasurer or other lawful officer. He shall at no time retain over three thousand dollars for a longer time than ten days, under a penalty of two per centum per month to the county upon all sums so unlawfully retained, and shall, on oath, render a statement to the board of commissioners at their monthly meeting of the amount in his hands. On or before the first Monday of February in each year the sheriff shall account to the county treasurer or other lawful officer for all taxes due the county for the fiscal year, and on

failing to do so he shall pay the county treasurer a penalty of two per centum per month on all sums unpaid, and this shall be continued until final settlement: Provided, the board of county commissioners may in their discretion relieve the sheriff or tax collector of said penalty of two per centum per month upon payment in full of the county taxes: Provided further, the county commissioners may extend the time of settlement of county taxes by the sheriff of the county to the first Monday in May.

Rev., s. 5249; 1917, c. 234, s. 105; 1919, c. 92, s. 105.

8049. Manner of settlement. The sheriff or tax collector shall be charged with the sums appearing by the tax list as due for the county taxes, and shall be allowed to deduct therefrom, in like manner as is prescribed by law in regard to his settlement of the state taxes, all insolvents and uncollectible poll taxes, and also the amount of county tax on the lands bid off by the county, and costs and fees, which shall be, for making a deed, fifty cents; for registering, twenty-five cents; and such other necessary sums as were actually paid by the sheriff: Provided, a majority of any board of county commissioners may extend the time for collecting and settlement of county taxes in the respective counties to such time as they may deem expedient, not to extend beyond the first of May in the year following in which taxes were levied: Provided further, that any sheriff, tax collector or county treasurer who shall use any part of the county or state taxes otherwise than as directed by law shall forfeit double the amount of his commission on county and state taxes for the year in which he so misused said taxes. No mortgage or lien on any property shall be superior to the taxes on such property, whether said mortgage or lien was given prior or subsequent to the levy of the taxes.

Rev., s. 5250; 1917, c. 234, s. 107; 1919, c. 92, s. 107.

Where sheriff failed to settle for taxes within time appointed by law and not having had allowance made him by commissioners for insolvents at time and in manner prescribed by law, he cannot have such allowances made by the court in an action brought against him on his official bond for balance due by him on tax list: *Comrs. v. Wall*, 117-377. He cannot use as a set-off or counterclaim errors made in former settlements: *Comrs. v. Hall*, 177-490.

Sureties on sheriff's bond, who have had to pay for his default, cannot recover amount from county commissioners because they failed to comply with this section: *Hudson v. McArthur*, 152-445.

8050. Auditing accounts of officers. The board of county commissioners, at their last regular or other subsequent meeting in each year, shall appoint one or more of their number, not to exceed three, to be present at the accounting and settlements between the sheriff and county treasurer provided for in the preceding section, and also to audit and settle accounts of the county treasurer and all other county officers authorized to receive or disburse county funds. The account so audited shall be reported to the board of county commissioners, and when approved by them shall be filed with the clerk and recorded on his book, and shall be prima facie evidence of their correctness, and impeachable only for fraud or special error: Provided, the compensation allowed the committee for their services shall not exceed three dollars per day each for the time actually spent in said settlements, and there shall be no allowance for extra clerical aid.

Rev., s. 5251; 1917, c. 234, s. 108; 1919, c. 92, s. 108.

The auditing of account of sheriff by county commissioners is prima facie evidence of its correctness, and it is impeachable only for fraud or special error: *Williamson v. Jones*, 127-

178; *Comrs. v. Kerner*, 127-181; *Comrs. v. White*, 123-534; *Comrs. v. Wall*, 117-377; *Suttle v. Doggett*, 87-203; *Davenport v. McKee*, 98-509—and when account is not true it is *prima facie* fraudulent, *Comrs. v. Taylor*, 77-404.

All school taxes are included in the accounting to be made between the county treasurer and the sheriff, and for the failure to pay over such taxes, whether exclusively school taxes or of that part collected for county purposes, sheriff is liable for statutory penalty: *Tillery v. Candler*, 118-888.

8051. Penalty for failure to account with county. In case the sheriff of a county shall fail, neglect, or refuse to account with the county treasurer and auditing committee as above required, or to pay what may rightfully be found due on such accounts, he shall forfeit and pay to the state for the use of the county a penalty of twenty-five hundred dollars. It shall be the duty of the county treasurer, and if he neglect or refuse to perform it, it shall be the duty of the chairman of the board of commissioners to cause an action to be brought in the superior court of the county on the bond of the sheriff, against him and his sureties, to recover the amount owing by him and the penalty aforesaid. If the sheriff shall fraudulently and corruptly fail to account as aforesaid, he shall be criminally liable thereupon in like manner and with same penalties imposed for such criminal defalcation as provided in section 8045 for failure to settle the state taxes.

Rev., s. 5253; 1917, c. 234, s. 109; 1919, c. 92, s. 109.

For action on sheriff's bond, see section 3930.

The collection of revenues is under the controlling power of the legislature, and sheriffs and their bondsmen are affected with notice thereof and subject to its exercise. It enters into and becomes a part of their contract with state, and is as binding as any express condition of the bond: *Worth v. Cox*, 89-44.

Where a sheriff's settlement of one tax fund is made partially by an amount deducted from another tax fund, settlement exonerates him and his surety from liability on the bond for taxes settled; he and his sureties on the bond for the taxes misappropriated, in an action for failure to settle the same, are liable for such defalcation: *McGuire v. Williams*, 123-349.

School taxes are included in the accounting and sheriff liable to penalty for failure to settle: *Tillery v. Candler*, 118-888.

An account stated and settlement made between parties (here a county and its tax collector) have the force of a contract, and operate as a bar to a subsequent accounting, except upon a specific allegation of fraud or mistake: *Suttle v. Doggett*, 87-203.

One who is specially deputed by a sheriff to collect taxes continues to be deputy for that purpose after resignation by his principal; and the sureties upon his bond are liable for the money by him collected after that time: *Perry v. Campbell*, 63-257.

Fact that tax books were attached in a suit against sheriff by his creditors subsequently to the time when he should have settled with commissioners, was no defense to action instituted for the collection of the balance of taxes due, nor can sheriff be excused upon ground that he misunderstood the order of reference made in the action: *Comrs. v. Wall*, 117-377.

Where an action is brought against sheriff for failure to collect and pay over taxes, he is properly chargeable with amount of the tax list, and the burden of proving a discharge of any part thereof is upon him: *Ibid.*

Where sheriff had rendered an account of the taxes collected by him in a settlement with county treasurer, which account was not itemized: Held, in an action upon his bond, that it was not necessary for the complaint to specify any errors in such settlement: *Comrs. v. Taylor*, 77-404.

Bond of sheriff, conditioned for the due collection of taxes during his continuance in office, is liable for taxes collected by him upon a tax list which had been in the hands of his predecessor in office: *Comrs. v. Taylor*, 77-404.

Where defense of sheriff to an action on his bond for taxes due by him is a refusal of credits to which he claims he is entitled, he must set out such credits specifically in his answer: *Williamson v. Jones*, 127-178.

The treasurer is the proper officer to bring action for the public money, and to make the county commissioners liable for failure to perform their duty it is necessary to allege and prove negligent failure or wilful refusal: *Bray v. Barnard*, 109-44.

Previous settlements with sheriff, when approved by the board of commissioners, are *prima facie* correct, and the burden of proving to the contrary rests upon them: *Comrs. v. White*, 123-534.

8052. County treasurer to fix day for settlement. In each year the county treasurer shall give five days notice to all the county officers (except the sheriff) authorized to receive or disburse the county funds, to appear at the courthouse on a certain day in January, before him and the committee appointed by the board of commissioners, and present an account of all sums received or disbursed for the county, with their vouchers, and any officer failing to attend and account shall be deemed guilty of a misdemeanor. The accounts, when audited, shall be reported to the board of commissioners at their next meeting, and if approved, shall be filed with the clerk and recorded in their proceedings, together with their approval, and shall be deemed *prima facie* correct,

Rev., s. 5262; 1917, c. 234, s. 110; 1919, c. 92, s. 110.

CHAPTER 132

UNITED STATES LANDS

SEC.

8053. Acquisition of lands for specified purposes authorized; concurrent jurisdiction reserved.
8054. Unused lands to revert to state.
8055. Exemption of such lands from taxation.
8056. Conveyances of such lands to be recorded.
8057. Forest reserve in Western Carolina authorized; powers conferred.
8058. Acquisition of lands for river and harbor improvement; reservation of right to serve process.
8059. Acquisition of lands for public buildings; cession of jurisdiction; exemption from taxation.

8053. Acquisition of lands for specified purposes authorized; concurrent jurisdiction reserved. The United States is authorized, by purchase or otherwise, to acquire title to any tract or parcel of land in the state of North Carolina, not exceeding twenty-five acres, for the purpose of erecting thereon any custom-house, courthouse, postoffice, or other building, including lighthouse, light-keepers' dwellings, life-saving stations, buoys and coal depots and buildings connected therewith, or for the establishment of a fishcultural station and the erection thereon of such buildings and improvements as may be necessary for the successful operations of such fishcultural station. The consent to acquisition by the United States is upon the express condition that the state of North Carolina shall so far retain a concurrent jurisdiction with the United States over such lands as that all civil and criminal process issued from the courts of the state of North Carolina may be executed thereon in like manner as if this authority had not been given, and that the state of North Carolina also retains authority to punish all violations of its criminal laws committed on any such tract of land.

Rev., s. 5426; Code, ss. 3080, 3083; 1887, c. 136; 1899, c. 10; 1870-1, c. 44, s. 5.

8054. Unused lands to revert to state. The consent given in the preceding section is upon consideration of the United States building lighthouses, lighthouse-keepers' dwellings, life-saving stations, buoys, coal depots, fish stations, post-offices, custom-houses, and other buildings connected therewith, on the tracts or parcels of land so purchased, or that may be purchased; and that the title to land so conveyed to the United States shall revert to the state unless the construction of the aforementioned buildings be completed thereon within ten years from the date of the conveyance from the grantor.

Rev., s. 5426; Code, ss. 3080, 3083; 1899, c. 10; 1887, c. 136; 1870-1, c. 44, s. 5.

8055. Exemption of such lands from taxation. The lots, parcels, or tracts of land acquired under this chapter, together with the tenements and appurtenances for the purpose mentioned in this chapter, shall be exempt from taxation.

Rev., s. 5428; Code, s. 3082; 1870-1, c. 44, s. 3.

Land which the owner has contracted to sell to United States is not exempt from taxation until the title passes: *Land Co. v. Comrs.*, 174-634.

8056. Conveyances of such lands to be recorded. All deeds, conveyances, or other title papers for the same shall be recorded, as in other cases, in the office of the register of deeds of the county in which the lands so conveyed may lie, in the same manner and under the same regulations as other deeds and conveyances are now recorded, and in like manner may be recorded a sufficient description by metes and bounds, courses and distances, of any tract or legal division of any public land belonging to the United States, which may be set apart by the general government for the purpose before mentioned, by an order, patent, or other official document or paper so describing such land.

Rev., s. 5429; Code, s. 3081; 1870-1, c. 44, s. 2; 1872-3, c. 201.

8057. Forest reserve in western Carolina authorized; powers conferred. The United States is authorized to acquire by purchase, or by condemnation with adequate compensation, except as hereinafter provided, such lands in western North Carolina as in the opinion of the federal government may be needed for the establishment of a national forest reserve in that region. This consent is given upon condition that the state of North Carolina shall retain a concurrent jurisdiction with the United States in and over such lands so far that civil process in all cases, and such criminal process as may issue under the authority of the state of North Carolina against any person charged with the commission of any crime without or within said jurisdiction, may be executed thereon in like manner as if this consent had not been given. Power is hereby conferred upon the congress of the United States to pass such laws as it may deem necessary to the acquisition as hereinbefore provided, for incorporation in such national forest reserve such forest-covered lands lying in western North Carolina as in the opinion of the federal government may be needed for this purpose, but as much as two hundred acres of any tract of land occupied as a home by bona fide residents in this state on the eighteenth day of January, one thousand nine hundred and one, shall be exempt from the provisions of this section. Power is hereby conferred upon congress to pass such laws and to make or provide for the making of such rules and regulations, of both civil and criminal nature, and to provide punishment therefor, as in its judgment may be necessary for the management, control, and protection of such lands as may be from time to time acquired by the United States under the provisions of this section.

Rev., s. 5430; 1901, c. 17.

8058. Acquisition of lands for river and harbor improvement; reservation of right to serve process. The consent of the legislature of the state is hereby given to the acquisition by the United States of any tracts, pieces, or parcels of land within the limits of the state, by purchase or condemnation, for use as sites for locks and dams, or for any other purpose in connection with the improvement of rivers and harbors within and on the borders of the state. The consent hereby given is in accordance with the seventeenth clause of the eighth section of the first article of the constitution of the United States, and with the acts of congress in such cases made and provided; and this state retains concurrent jurisdiction with the United States over any lands acquired and held in pursuance of the

provisions of this section, so far as that all civil and criminal process issued under authority of any law of this state may be executed in any part of the premises so acquired, or the buildings or structures thereon erected.

1907, c. 681.

8059. Acquisition of lands for public buildings; cession of jurisdiction; exemption from taxation. The consent of the state is hereby given, in accordance with the seventeenth clause, eighth section, of the first article of the constitution of the United States, to the acquisition by the United States, by purchase, condemnation, or otherwise, of any land in the state required for the sites for custom-houses, courthouses, postoffices, arsenals, or other public buildings whatever, or for any other purposes of the government.

Exclusive jurisdiction in and over any land so acquired by the United States shall be and the same is hereby ceded to the United States for all purposes except the service upon such sites of all civil and criminal process of the courts of this state; but the jurisdiction so ceded shall continue no longer than the said United States shall own such lands. The jurisdiction ceded shall not vest until the United States shall have acquired title to said lands by purchase, condemnation, or otherwise.

So long as the said lands shall remain the property of the United States when acquired as aforesaid, and no longer, the same shall be and continue exempt and exonerated from all state, county, and municipal taxation, assessment, or other charges which may be levied or imposed under the authority of this state.

1907, c. 25.

CHAPTER 133

WEIGHTS AND MEASURES

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- 8060. Standard weights and measures; exception; penalty.
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- 8079. Tests returned to register; records kept.
- 8080. Meridian monuments protected by county commissioners.
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ART. 1. ESTABLISHMENT AND USE OF STANDARDS

8060. Standard weights and measures, exception; penalty. The standard weight of the following seeds and other articles named shall be as stated in this section, viz.:

Alfalfa shall be	60 lbs. per bu.
Apples, dried, shall be.....	24 lbs. per bu.
Apple seed shall be.....	40 lbs. per bu.
Barley shall be	48 lbs. per bu.
Beans, castor, shall be.....	46 lbs. per bu.
Beans, dry, shall be.....	60 lbs. per bu.
Beans, green in pod, shall be.....	30 lbs. per bu.
Beans, soy, shall be.....	60 lbs. per bu.
Beef, net, shall be.....	200 lbs. per bbl.
Beets shall be	50 lbs. per bu.
Blackberries shall be	48 lbs. per bu.
Blackberries, dried, shall be.....	28 lbs. per bu.
Bran shall be.....	20 lbs. per bu.
Broomcorn shall be	44 lbs. per bu.
Buckwheat shall be.....	50 lbs. per bu.
Cabbage shall be.....	50 lbs. per bu.
Canary seed shall be.....	60 lbs. per bu.

Carrots shall be.....	50 lbs. per bu.
Cherries, with stems, shall be.....	56 lbs. per bu.
Cherries, without stems, shall be.....	64 lbs. per bu.
Clover seed, red and white, shall be.....	60 lbs. per bu.
Clover, burr, shall be.....	8 lbs. per bu.
Clover, German, shall be.....	60 lbs. per bu.
Clover, Japan, Lespedeza, shall be, in hull.....	25 lbs. per bu.
Corn in ear, shucked, shall be.....	70 lbs. per bu.
Corn, shelled, shall be.....	56 lbs. per bu.
Corn in ear, with shucks, shall be.....	74 lbs. per bu.
Corn, Kaffir, shall be.....	50 lbs. per bu.
Corn, pop, shall be.....	70 lbs. per bu.
Cotton seed shall be.....	30 lbs. per bu.
Cotton seed, Sea Island, shall be.....	44 lbs. per bu.
Cucumbers shall be.....	48 lbs. per bu.
Fish shall be, half-barrel.....	100 lbs. per ½ bbl.
Flax seed shall be.....	56 lbs. per bu.
Grapes, with stems, shall be.....	48 lbs. per bu.
Grapes, without stems, shall be.....	60 lbs. per bu.
Gooseberries shall be.....	48 lbs. per bu.
Grass seed, Bermuda, shall be.....	14 lbs. per bu.
Grass seed, blue, shall be.....	14 lbs. per bu.
Grass seed, Hungarian, shall be.....	48 lbs. per bu.
Grass seed, Johnson, shall be.....	25 lbs. per bu.
Grass seed, Italian rye, shall be.....	20 lbs. per bu.
Grass seed, orchard, shall be.....	14 lbs. per bu.
Grass seed, tall meadow and tall fescue.....	24 lbs. per bu.
Grass seed, all meadow and fescue except tall.....	14 lbs. per bu.
Grass seed, perennial rye, shall be.....	14 lbs. per bu.
Grass seed, timothy, shall be.....	45 lbs. per bu.
Grass, velvet, shall be.....	7 lbs. per bu.
Grass, redtop, shall be.....	14 lbs. per bu.
Hemp seed shall be.....	44 lbs. per bu.
Hominy shall be.....	62 lbs. per bu.
Horseradish shall be.....	50 lbs. per bu.
Liquids shall be.....	42 gals. per bbl.
Meal, corn, whether bolted or unbolted.....	48 lbs. per bu.
Melon, cantaloupe, shall be.....	50 lbs. per bu.
Millet shall be.....	50 lbs. per bu.
Mustard shall be.....	58 lbs. per bu.
Nuts, chestnuts, shall be.....	50 lbs. per bu.
Nuts, hickory, without hulls, shall be.....	50 lbs. per bu.
Nuts, walnuts, without hulls, shall be.....	50 lbs. per bu.
Oats, seed, shall be.....	32 lbs. per bu.
Onions, button sets, shall be.....	32 lbs. per bu.
Onions, top buttons, shall be.....	28 lbs. per bu.
Onions, matured, shall be.....	57 lbs. per bu.
Osage orange seed shall be.....	33 lbs. per bu.
Peaches, matured, shall be.....	50 lbs. per bu.
Peaches, dried, shall be.....	25 lbs. per bu.
Peanuts shall be.....	22 lbs. per bu.
Peach seed shall be.....	50 lbs. per bu.
Peanuts, Spanish, shall be.....	30 lbs. per bu.
Parsnips shall be.....	50 lbs. per bu.
Pears, matured, shall be.....	56 lbs. per bu.
Pears, dried, shall be.....	26 lbs. per bu.
Peas, dry, shall be.....	60 lbs. per bu.
Peas, green, shall be, in hull.....	30 lbs. per bu.
Pieplant shall be.....	50 lbs. per bu.
Plums shall be.....	64 lbs. per bu.

Pork, net, shall be.....	200 lbs. per bbl.
Potatoes, Irish, shall be.....	56 lbs. per bu.
Potatoes, sweet, shall be.....	56 lbs. per bu.
Quinces, matured, shall be.....	48 lbs. per bu.
Raspberries shall be.....	48 lbs. per bu.
Rice, rough, shall be.....	44 lbs. per bu.
Rye seed shall be.....	56 lbs. per bu.
Sage shall be.....	4 lbs. per bu.
Salads, mustard, spinach, turnips, kale.....	10 lbs. per bu.
Salt shall be.....	50 lbs. per bu.
Sorghum seed shall be.....	50 lbs. per bu.
Sorghum molasses shall be.....	12 lbs. per bu.
Strawberries shall be.....	48 lbs. per bu.
Sunflower seed shall be.....	24 lbs. per bu.
Teosinte shall be.....	59 lbs. per bu.
Tomatoes shall be.....	56 lbs. per bu.
Turnips shall be.....	50 lbs. per bu.
Wheat shall be.....	60 lbs. per bu.
Cement shall be.....	80 lbs. per bu.
Charcoal shall be.....	22 lbs. per bu.
Coal, stone, shall be.....	80 lbs. per bu.
Coke shall be.....	40 lbs. per bu.
Hair, plastering, shall be.....	8 lbs. per bu.
Land plaster shall be.....	100 lbs. per bu.
Lime, unslaked, shall be.....	80 lbs. per bu.
Lime, slaked, shall be.....	40 lbs. per bu.

But this section shall not be construed to prevent the purchase and sale by measure.

If any person shall take any greater weight than is specified for any of the items named herein, he shall forfeit and pay the sum of twenty dollars for each separate case to any person who may sue for same.

1915, c. 230, s. 1; 1909, c. 555, s. 1; 1917, c. 34.

8061. Congressional standards adopted. No trader or other person shall buy or sell, or otherwise use in trading, any other weights and measures than are made and used according to the standard prescribed by the congress of the United States: Provided, that this chapter shall not prevent the citizens of the state from buying and selling grain by measure as may be agreed upon between the parties.

Rev., s. 3063; Code, s. 3837; R. C., c. 117, s. 1; 1741, c. 32, s. 2; 1866, c. 125.

History of legislation in regard to weights and measures reviewed in *Nance v. R.*, 149-366.

8062. Area of acre. The measure of an acre of land shall be equal to a rectangle of sixteen poles or perches in length and ten in breadth, and shall contain one hundred and sixty square perches or poles, or four thousand eight hundred and forty square yards, six hundred and forty such acres being contained in a square mile.

Rev., s. 3065; Code, s. 3843; R. C., c. 117, s. 7; 33 Edw. I, c. 6.

8063. County commissioners to provide standards. The board of commissioners of each county shall, at the charge of their county, procure standard sealed weights of half hundred, quarter hundred, ten pounds, five pounds, two pounds, and one pound, one-half pound, one-quarter pound, two ounces, one ounce, one-

half ounce, gauging rod and waist sticks, yardsticks, half-bushel, peck, half-peck, quarter-peck, and one-eighth peck; gallon, half-gallon, quart, pint, half-pint, and gill measure, of the United States standard, sealed and branded "N. C."

Rev., s. 3064; Code, s. 3838; 1866-7, c. 126; 1881, c. 199.

8064. Penalty for using untested standards. If any person, after demand by the standard-keeper for permission to examine and adjust the same, shall buy, sell or barter by any weight or measure which shall not be tried by the standard, and sealed or stamped as aforesaid, he shall, for every such offense, forfeit and pay forty dollars, and if any person shall sell and deliver by less measure than the standard, he shall forfeit and pay for each offense forty dollars to the person suing therefor.

Rev., s. 3067; Code, s. 3842; 1893, c. 100.

The penalty applies to using untested weights and measures in buying, selling or bartering: *Nance v. R. R.*, 149-366.

ART. 2. STATE STANDARD-KEEPER

8065. Appointment; bond; keeper of capitol to act. The governor is authorized to appoint a suitable person to take care of the balances, weights and measures, and perform the duties relating to weights and measures heretofore imposed on the governor, and such other duties as the governor may prescribe, touching said balances and weights and measures; and he shall take from such person a bond with surety, to be approved by the governor, in the penal sum of five hundred dollars, for the safe-keeping of said weights and measures and for the performance of all his duties. And in case the governor fails to appoint, or the person appointed fails to qualify or discharge said duties, the keeper of the capitol shall be ex officio the keeper of weights and measures, and discharge the duties and receive the compensation provided.

Rev., s. 3068; Code, s. 3844; 1866-7, res., p. 228; 1881, c. 199, s. 3.

8066. To procure and supply standards to counties. It shall be the duty of the keeper of weights and measures, under the direction of the governor, to procure and furnish, at prime cost, to any of the counties, upon an order of the board of county commissioners, any of the standard sealed weights and measures required by law to be kept, and he is hereby authorized, by and with the approval of the governor, to contract for the manufacture of plain sealed weights substantially made of iron, steel, or brass, as the county ordering may direct; yardstick made of substantial wood, each end neatly covered with metal, sealed, marked and stamped "N. C."; half-bushel, peck, half-peck, quarter-peck, and one-eighth peck, made of substantial, well-seasoned wood, with secure metallic binding and casing; gallon, half-gallon, quart, pint, half-pint, and gill measure, made of light sheet copper with iron handles. He shall procure and furnish as herein provided to the board of commissioners of any county ordering the same, dry and liquid sealed measures and yardstick made of brass or copper.

Rev., s. 3069; Code, s. 3839; 1881, c. 199, s. 2.

8067. Counties to pay costs of standards. It shall be the duty of the state standard-keeper to supply to each county which shall call for the same such

standard weights as the standard-keeper of such county shall demand, duly sealed, such county paying to the state treasurer the actual cost of such weights, upon the certificate of the state standard-keeper.

Rev., s. 3070; Code, s. 3846; 1866-7, c. 126, s. 1.

8068. To keep record. It shall be the duty of the state standard-keeper to keep a book, in which he shall keep an accurate account of all the weights and measures by him delivered, and the expenses incurred by him in the purchase of such weights and measures, subject to the inspection of the state treasurer and the general assembly.

Rev., s. 3071; Code, s. 3847; 1866-7, c. 126, s. 2.

ART. 3. COUNTY STANDARD-KEEPER

8069. Appointment; term; oath; bond. The weights and measures, stamps and brands thus provided shall be kept at the courthouse of the respective counties by a standard-keeper, to be elected by the board of commissioners for the term of two years; the person thus elected shall, before the board of county commissioners, take the oath required for public officers and also an oath of office, and shall give bond, with good and sufficient surety, payable to the state of North Carolina, in the sum of two hundred dollars, conditioned for the safe-keeping of weights and measures, stamps and brands of said county, and for the faithful performance of the duties of his office.

Rev., ss. 306, 3072; Code, s. 3840; R. C., c. 117, s. 4; 1741, c. 32, s. 3; 1816, c. 901, s. 2; 1827, c. 22, s. 3.

8070. Removal of standards. The standard-keeper may remove the weights and measures, stamps and brands from the courthouse, not to exceed sixty days in any one year, for the purpose of testing weights and measures throughout the county.

Rev., s. 3072.

8071. Testing and marking standards; penalty. Every person, firm, or corporation using weights and measures of any and every kind which shall be used in buying or selling or bartering, or for hire, or in fixing or determining the amount of toll or charge or rate for any service shall allow or permit the standard-keeper of the county to try, examine, and adjust by the standard, at least once every two years, all the said weights and measures of any and every kind used as aforesaid, and every person, firm, or corporation who shall neglect to comply with the requirements of this section shall forfeit and pay fifty dollars, to be recovered at the suit of the standard-keeper, one-half to his use and the other half to the use of the county wherein the default occurs. It shall be the duty of the standard-keeper, when practicable, to mark, by stamp or brand, the weights or measures found or made to agree with the standard, and shall give a certificate of such examination and adjustment, stating the weights and measures examined and adjusted.

Rev., s. 3073; 1909, s. 695.

Penalty portion of section as to division of recovery held constitutional: *Sutton v. Phillips*, 116-502; approved in *McDonald v. Morrow*, 119-674. The penalty applies only to those who use untested weights and measures in buying, selling or bartering: *Nance v. R. R.*, 149-366.

8072. Destruction of unadjusted standards. In every instance where the standard-keeper shall have before him for adjustment, or shall find in the possession of any person, intending to use the same, any weight or measure that cannot be adjusted so as to meet the requirements of the law, it shall be the duty of the standard-keeper to destroy the same.

Rev., s. 3074; Code, s. 3848; 1866-7, c. 126, s. 4.

8073. Local: Office abolished in certain counties. The office of county standard-keeper is abolished in the following counties, and in these counties the section regulating that office and its duties do not apply: Ashe, Beaufort, Bertie, Bladen, Brunswick, Camden, Cumberland, Currituck, Gaston, Halifax, Lincoln, Montgomery, Moore, Northampton, Rutherford, Swain, Warren, Yadkin, Yancey.

Rev., ss. 3072, 3073; 1909, c. 106 (Ashe); 1909, c. 354 (Camden); 1909, c. 695 (Swain); P. L. 1911, c. 153 (Vance); P. L. 1911, c. 593 (Brunswick, Cumberland, Yadkin).

NOTE.—For local laws regulating standard-keepers in certain counties, see:

Beaufort: P. L. 1913, c. 557; P. L. 1915, c. 17; P. L. 1917, c. 167 (authorizing commissioners to appoint standard-keeper).

Cumberland: P. L. 1911, c. 706 (on complaint commissioners may appoint competent person to examine weights and measures).

Harnett: 1909, c. 725 (purports to bring Harnett within this article).

Nash, Sampson, and Wilson: Rev., s. 3174; 1909, c. 340; P. L. 1911, c. 446 (after a person's standards are once tested he is not required to have them tested again unless on oath of a responsible person in the county filed with the standard-keeper that he has reason to believe such standards are not properly adjusted, and notice thereof given the owner of the standards. For failure to have standards examined after notice, the owner is liable to the penalty above provided for using untested standards).

ART. 4. SURVEYORS

8074. Standard surveyor's chain; tests. The standard measure for a surveyor's chain shall be twenty-two standard yards, a standard half or two-pole chain shall be eleven standard yards, a standard quarter or one-pole chain shall be five and one-half standard yards; but every person using a surveyor's chain, half-chain, or quarter-chain for measuring land shall every two years test the same in the manner hereinafter provided.

Rev., s. 3075; 1889, c. 409; 1899, c. 665.

8075. Using untested chain misdemeanor. If any person who shall use any chain for measuring land without having the same first measured and sealed by the standard-keeper, or who shall use the same for a longer period than two years without bringing it to the standard-keeper and having the same measured and sealed by him, he shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding ten dollars.

Rev., s. 3684; 1889, c. 409, s. 2.

8076. Tests for magnetic variation and for chain. Every surveyor operating in any of the counties of this state with magnetic instruments, whether in a public or private capacity, shall, between the first day of January and thirty-first day of December in each and every year, carefully test his needle upon the official

meridian monuments in the county in which he resides or the nearest county in which such monuments have been erected, by adjusting his instrument over the intersection of the lines cut into the top of one of the meridian monuments so established and sighting to the intersection of the lines cut into the top of the other meridian monument, noting the variation of the magnetic from the true meridian and the direction thereof, and shall test the chain or other instrument of linear measure upon the distance from center to center as indicated by intersecting lines of the two beams, tablets, or other official monuments set at or near the county courthouse for this purpose, noting the error of such instrument as compared with the standard of the monuments.

Rev., s. 3076; 1899, c. 665, s. 1; 1901, c. 642.

8077. Magnetic variation to be recorded with survey. On every official record of a survey of lands made after the first day in July, nineteen hundred and one, in any county in which meridian monuments have been erected, there shall be entered by the surveyor making such survey a record as to the date of testing the magnetic instrument used, and the amount of declination or variation of the magnetic needle indicated at such test.

Rev., s. 3076.

8078. Surveys in another county; data as to variation recorded. Before making surveys in any county other than the one in which the magnetic instrument and instruments for linear measure to be used have already been tested, said surveyor shall procure in writing from the register of deeds of the county in which said monuments have been established, nearest to the point where the survey is to be made, a statement giving the declination of the magnetic needle for the year in which it was last determined, and the rate and direction of the variation of said magnetic needle since that time, and this data shall be recorded as a part of the record of his survey. But no surveyor shall be required to go outside of the county in which he resides for the purpose of testing the instruments herein named.

Rev., s. 3077; 1899, c. 665, s. 1.

8079. Tests returned to register; records kept. Such tests and the correction, if any, resulting therefrom shall be returned by the surveyor in writing and under oath to the register of deeds for the county in which such meridian is situate within ten days from the taking of the observations, setting forth the name of the surveyor, his residence, the character of the instrument tested, the date of the observations, the declination east or west of the magnetic needle from the true meridian, together with a fee of ten cents for filing and registering the same; and such return shall be filed and registered by the register of deeds in a book properly ruled and lettered, to be furnished by the board of commissioners of the county, to be used for such purpose exclusively and entitled "The Meridian Record."

Rev., s. 3078; 1899, c. 665, s. 1.

8080. Meridian monuments protected by county commissioners. It shall be the duty of the board of county commissioners to maintain and protect the meridian

monuments and tablets or monuments for the testing of chains or other instruments of linear measure established by the state, or national surveys coöperating with the county authorities, in good order and condition as the official standards of the county.

Rev., s. 3079; 1899, c. 665, s. 2.

8081. Defacing meridian monuments misdemeanor. If any person shall in any manner injure, deface, remove, or destroy any meridian monument or tablets, or any part thereof, or shall fail, neglect, or refuse to do and perform any act, matter, or thing by law required of him to be done in connection with such monuments or tablets, he shall be guilty of a misdemeanor, and upon conviction thereof shall pay a fine or be imprisoned, or both, at the discretion of the court.

Rev., s. 3743; 1899, c. 665, s. 3; 1893, c. 282, s. 4.

CHAPTER 134

WRECKS

SEC.

- 8082. Number and boundaries of wreck districts.
- 8083. Commissioners of wrecks; appointment, residence, and term of office.
- 8084. Commissioners to give bond.
- 8085. Commissioners to take oath of office.
- 8086. Duty of commissioners.
- 8087. Salvage to be paid, or its payment secured, before release of goods.
- 8088. Adjustment of salvage where the parties cannot agree.
- 8089. Sale of wrecked property for salvage; compensation of commissioner.
- 8090. Compensation of commissioner where there is no sale.
- 8091. Sale of unclaimed property.
- 8092. Proceeds of sale to be paid to clerk of superior court.
- 8093. Disposition of proceeds of sale by clerk.
- 8094. Proof of ownership of property sold.
- 8095. Stranded property to be reported; failure to report misdemeanor.
- 8096. Expenses to be deducted from proceeds of sales.
- 8097. Violation of chapter a misdemeanor.
- 8098. Commissioner violating chapter liable for double damages and guilty of a misdemeanor.
- 8099. Interfering with commissioner in the discharge of his duties.

8082. Number and boundaries of wreck districts. The counties of Currituck, Dare, Hyde, Carteret, Onslow, Brunswick, and New Hanover are hereby divided into the following wreck districts, namely:

Currituck.—The first to extend from the Virginia state line to Judy's cove; the second to extend from Judy's cove to Josephus Baum's fish-house; the third to extend from Josephus Baum's fish-house to the county line of Dare.

Dare.—The first to extend from the county line of Currituck to the north point of Oregon inlet; the second to extend from the north point of Oregon inlet to the south point of New inlet; the third to extend from the south point of New inlet to the patrol house between Gull Shoal and Little Kennakeet life-saving stations; the fourth to extend from the last named patrol house to the patrol house between Big Kennakeet and Cape Hatteras life-saving stations; the fifth to extend from the last named patrol house to Creed's Hill life-saving stations; the sixth to extend from Creed's Hill life-saving stations to the county line of Hyde county.

Hyde.—The county of Hyde shall constitute one wreck district, which shall extend from the Dare county line to the Carteret county line.

Carteret.—The first from the Hyde county line to Core Banks life-saving station; the second from Core Banks life-saving station to Old Topsail inlet; the third from Old Topsail inlet to the Onslow county line.

Onslow.—The first from Bogue inlet to New River inlet; the second from New River inlet to the New Hanover county line.

New Hanover and Brunswick.—To extend from the Onslow county line to the South Carolina state line.

Rev., s. 5429; 1899, c. 79, ss. 1-9; 1903, c. 85; 1905, c. 199; 1915, c. 42.

8083. Commissioners of wrecks; appointment, residence and term of office. The governor, whenever it may be necessary, shall appoint a commissioner of wrecks for each of the districts designated in the preceding section. Each commissioner shall reside in the district for which he is appointed, unless separated by navigable waters, in which case the distance shall not exceed three miles. The restrictions as to residence shall not apply to Hyde county. No person who holds any office of profit or trust under the laws of the United States or the state of North Carolina, nor any person who is a pilot, shall hold the office of commissioner of wrecks. The term of office shall be for two years.

Rev., s. 5440; 1899, c. 79, ss. 10, 12, 13; 1903, c. 85; 1907, c. 398.

8084. Commissioners to give bond. Every person appointed a commissioner of wrecks shall enter into a bond, with good and sufficient surety, in the sum of two thousand dollars, payable to the state of North Carolina and conditioned for the faithful performance of his duties. This bond shall be approved by the board of county commissioners and deposited in the office of the clerk of the superior court.

Rev., s. 305; 1899, c. 79, s. 10.

8085. Commissioners to take oath of office. Every person appointed a commissioner of wrecks, before entering upon the duties of his office, shall go before some officer duly authorized to administer oaths and take an oath to perform faithfully the duties of his office, and the oaths to support the constitution of the state and of the United States.

Rev., s. 5441; 1899, c. 79, s. 11.

8086. Duty of commissioners. Upon the earliest intelligence given that any ship or vessel is stranded, it shall be the duty of the commissioner in whose district the same is stranded, or his duly authorized agent, to repair at once to such wrecked ship or vessel, and upon the permission of its master to summon immediately a sufficient number of men who, acting under the direction of the commissioner or his agent, shall at once proceed to save the cargo and material of such wrecked vessel. As soon as any such stranded property is saved it shall be immediately placed under guard, one guard to be selected by the commissioner or owner representing the same, and one other guard to be selected by the salvors. Such goods or stranded property shall be kept under strict guard until sold or the salvors are paid as provided in this chapter.

Rev., s. 5442; 1899, c. 79, s. 14; 1901, c. 178.

See old cases of interest: *Hetfield v. Baum*, 35-395; *Etheridge v. Jones*, 30-100.

8087. Salvage to be paid, or its payment secured, before release of goods. Every person who assists in saving such cargo or material shall, within thirty days after saving the same, be paid a reasonable reward by the owner or master of the stranded vessel, or by the merchant whose vessel or goods are saved. In default of payment of a reasonable compensation the goods or other property so saved shall remain in the joint custody of the commissioner and salvors until all such charges are paid, or until the payment thereof is secured to the satisfaction of the parties saving such goods or other property.

Rev., s. 5443; 1899, c. 79, ss. 14, 15.

8088. Adjustment of salvage when the parties cannot agree. If the parties shall disagree touching the amount of reward or salvage to be paid to the persons employed, the commander, owner, or commissioner who represents the property saved shall choose one disinterested person, and the salvors shall nominate one other, who shall adjust and ascertain the same. If the persons thus chosen cannot agree, they shall choose one other indifferent person as umpire to decide between them: Provided, that the amount to be paid the salvors shall be determined and agreed upon before sale is made of such property.

Rev., s. 5444; 1899, c. 79, s. 16.

8089. Sale of wrecked property for salvage; compensation of commissioner. If the owner of the vessel, or the property which has been saved, shall fail for thirty days after the salvage has been ascertained, either by agreement or as provided for in the preceding section, to pay such salvage, it shall be the duty of the commissioner of wrecks in charge of such stranded or wrecked vessel or other property to sell the same at public sale, after first advertising such sale in the same manner as is required for sales of personal property under execution. Each commissioner shall provide himself with books and shall record in them all such sales by him made. He shall receive for selling any such wrecked or stranded property five per centum on the amount of sales, and in addition thereto he shall receive his actual expenses incurred in going to and returning from the place of the wreck, or where the property is stranded, to be paid out of the gross amount of such sales. At any public sale of stranded property, the salvors may select one person and the commissioner one other, who shall keep an accurate account of the sales, make the collections, settle with the commissioner his fees, and pay to the salvors the amount agreed on or awarded by the referees.

Rev., s. 5445; 1899, c. 79, s. 17; 1901, c. 178; 1905, c. 66.

Old cases of interest: *Hetfield v. Baum*, 35-395; *Etheridge v. Jones*, 30-100.

8090. Compensation of commissioner when there is no sale. If any owner or merchant shall remove any such goods or other stranded property from the custody of any commissioner without a sale, then such commissioner shall receive, in addition to his actual expenses incurred for the purposes mentioned in the preceding section, two and one-half per centum on the amount of the value of such property, which amount shall be ascertained in the same manner as is provided for ascertaining the amount of the reward to be paid salvors in those cases where such reward cannot be determined by agreement. No commissioner shall receive any salvage or other reward except the commission prescribed in this chapter.

Rev., s. 5446; 1899, c. 79, ss. 17, 18; 1905, c. 66.

Old cases of interest: *Hetfield v. Baum*, 35-395; *Etheridge v. Jones*, 30-100.

8091. Sale of unclaimed property. Whenever any vessel, cargo, or material of any ship or vessel or any other property shall be cast ashore or taken up at sea and brought to shore, and no person is present to claim the same as owner, it shall be the duty of the commissioner of the district where the same is brought or cast ashore to take charge of such property and to proceed to advertise and sell it at public sale, first giving twenty days notice of such sale at three public places.

On making any such sale the commissioner shall, out of the gross proceeds thereof, retain a commission of five per centum as his compensation and the amount awarded to the salvors pursuant to the provisions of this chapter.

Rev., s. 5447; 1899, c. 79, ss. 19, 20.

8092. Proceeds of sale to be paid to clerk of superior court. When any commissioner shall undertake to sell any property where no person is or has been present to claim the same, it shall be his duty to notify the clerk of the superior court of his county of such sale. After any such sale is made, the commissioner shall forward to such clerk the proceeds of the sale, after deducting his commission of five per centum and paying the salvors the amount awarded to them as provided in this chapter.

Rev., s. 5448; 1899, c. 79, s. 21.

8093. Disposition of proceeds of sale by clerk. It shall be the duty of the clerk of the superior court to make a record and keep an account of all moneys received by him from any commissioner of wrecks, and he shall advertise in some weekly newspaper published in North Carolina the amount so received, giving a true description of the marks, numbers, and kinds of goods or other stranded property for which the same was sold. Each commissioner shall give the clerk of the superior court all necessary information for the proper enforcement of this section in each return made by him to the clerk. The clerk shall advertise for the space of sixty days, and if no person shall come to claim the money within a year and a day from the date of advertisement, then the clerk holding such money shall transmit the same, after deducting one per centum for his trouble and also after deducting the cost of advertising, to the treasurer of the state for the benefit of the public school funds.

Rev., s. 5449; 1899, c. 79, s. 22.

8094. Proof of ownership of property sold. If any person shall claim to be the owner of any property sold as provided in the third preceding section and shall present his claim to the clerk holding the money arising from the sale of such property, it shall be the duty of such person to prove his title to the satisfaction of the clerk. If any person making a claim to such property be unknown to the clerk, then the clerk shall submit such claim to the consideration of three disinterested persons, one of whom shall be chosen by the claimant, and the decision of such referees shall always be final.

Rev., s. 5450; 1899, c. 79, s. 23.

8095. Stranded property to be reported; failure to report misdemeanor. If any person shall find any wrecked or stranded property on or near the seashore, no person being present to claim the same, he shall as soon as possible give information thereof to the nearest commissioner of wrecks, who shall advertise and sell the same as provided in this chapter. If such finder shall refuse to report the goods so found, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars, or imprisoned not more than thirty days.

Rev., ss. 3548, 5451; 1899, c. 79, s. 24.

8096. Expenses to be deducted from proceeds of sales. All necessary expenses shall be deducted from the gross proceeds of any sales made under this chapter.

Such necessary expenses shall include only the cost of advertising, guarding, and surveying, when a survey is called by a notary public, as is provided by the Revised Statutes of the United States.

Rev., s. 5452; 1899, c. 79, s. 19.

8097. Violation of chapter a misdemeanor. If any person shall violate any of the provisions of this chapter he shall be guilty of a misdemeanor.

Rev., s. 3562; 1899, c. 79, s. 26.

8098. Commissioner violating chapter liable for double damages and guilty of a misdemeanor. If any commissioner of wrecks shall by fraud or wilful neglect violate any of the provisions of this chapter, or abuse the trust reposed in him, he shall forfeit and pay double the amount of damages to the party aggrieved. He shall also be guilty of a misdemeanor, and upon conviction shall forfeit his office and shall thereafter be incapable of acting as commissioner.

Rev., s. 3563; 1899, c. 79, s. 25.

8099. Interfering with commissioner in the discharge of his duties. If any person shall wilfully and unlawfully resist, delay, or obstruct any commissioner of wrecks in discharging or attempting to discharge his duties as such commissioner, he shall be guilty of a misdemeanor.

Rev., s. 3564; 1905, c. 66, s. 2.

CHAPTER 135

CONCERNING THE CONSOLIDATED STATUTES

SEC.

- 8100. Title of revision.
- 8101. Effect as to repealing other statutes.
- 8102. Repeal not to affect rights accrued, nor suits commenced.
- 8103. Offenses and penalties not affected.
- 8104. Pending actions and proceedings not affected.
- 8105. Effect of repeal on persons holding office.
- 8106. What statutes not repealed.

8100. Title of revision. This revision of the statutes may be known and cited as The Consolidated Statutes.

8101. Effect as to repealing other statutes. All public and general statutes not contained in the Consolidated Statutes are hereby repealed, with the exceptions and limitations hereinafter mentioned. No statute or law which has been heretofore repealed shall be revived by the repeal contained in any of the sections of the Consolidated Statutes. All public and general statutes passed at the present session of the general assembly shall be deemed to repeal any conflicting provisions contained in the Consolidated Statutes.

8102. Repeal not to affect rights accrued, nor suits commenced. The repeal of the statutes mentioned in the preceding section shall not affect any act done, or any right accruing, accrued or established, or any action or proceeding had or commenced in any case before the time when such repeal shall take effect; but the proceedings in every such case shall be conformed, when necessary, to the provisions of the Consolidated Statutes.

8103. Offenses and penalties not affected. No offense committed and no penalty or forfeiture incurred under any of the statutes hereby repealed, and before the time when such repeal shall take effect, shall be affected by the repeal.

8104. Pending actions and proceedings not affected. No action or proceedings pending at the time of the repeal, for any offense committed, or for the recovery of any penalty or forfeiture incurred under any of the statutes hereby repealed, shall be affected by such repeal, except that the proceedings in such action or proceeding shall be conformed, when necessary, to the provisions of the Consolidated Statutes.

8105. Effect of repeal on persons holding office. All persons who at this time shall hold any office under any of the acts hereby repealed shall continue to hold the same according to the tenure thereof.

8106. What statutes not repealed. The Consolidated Statutes shall not have the effect to repeal any public-local statute, any public statute which affects only a particular locality, any private statute, any statute relating to the boundary of the state or of any county, any act ceding the lands of the state to the general

government, or any statute relating to the Cherokee lands, if the statute referred to was in force on the first day of January in the year one thousand nine hundred and nineteen.

8107. Consolidated Statutes effective August 1, 1919. All provisions, chapters, subdivisions of chapters and sections contained in the Consolidated Statutes shall be in force from and after the first day of August, one thousand nine hundred and nineteen.

1919, c. 238, s. 8.

APPENDICES

- I. CONSTITUTION OF THE STATE OF NORTH CAROLINA
- II. CONSTITUTION OF THE UNITED STATES
- III. AUTHENTICATION OF RECORDS
- IV. REMOVAL OF CAUSES
- V. NATURALIZATION LAWS
- VI. TABLE OF COMPARATIVE SECTIONS OF REVISAL OF 1905
AND CONSOLIDATED STATUTES

APPENDIX I

CONSTITUTION OF THE STATE OF NORTH CAROLINA

Adopted April 24, 1868, with amendments to 1920.

See *Freeman v. Lide*, 176-434.

PREAMBLE

We, the people of the State of North Carolina, grateful to Almighty God, the Sovereign Ruler of nations, for the preservation of the American Union and the existence of our civil, political and religious liberties, and acknowledging our dependence upon Him for the continuance of those blessings to us and our posterity, do, for the more certain security thereof, and for the better government of this state, ordain and establish this Constitution :

Const. 1868.

ARTICLE I

DECLARATION OF RIGHTS

That the great, general and essential principles of liberty and free government may be recognized and established, and that the relations of this state to the union and government of the United States, and those of the people of this state to the rest of the American people may be defined and affirmed, we do declare :

Const. 1868.

Section 1. The equality and rights of men. That we hold it to be self-evident that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness.

Const. 1868; Decl. Independence.

State v. Hay, 126-1006; *State v. Hill*, 126-139.

Sec. 2. Political power and government. That all political power is vested in, and derived from, the people; all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.

Const. 1868; Const. 1776, Decl. Rights, s. 1.

Quinn v. Lattimore, 120-428; *Nichols v. McKee*, 68-430.

Sec. 3. Internal government of the state. That the people of this state have the inherent, sole and exclusive right of regulating the internal government and police thereof, and of altering and abolishing their constitution and form of government whenever it may be necessary for their safety and happi-

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ness; but every such right should be exercised in pursuance of the law, and consistently with the constitution of the United States.

Const. 1868; Const. 1776, Decl. Rights, s. 2.

State v. Railway, 145-496; State v. Herring, 145-418; State v. Hicks, 143-689; State v. Lewis, 142-626; Durham v. Cotton Mills, 141-616; State v. Sutton, 139-574; State v. Holoman, 139-642; State v. Patterson, 134-612; State v. Gallop, 126-979; Humphrey v. Church, 109-132; Winslow v. Winslow, 95-24.

Sec. 4. That there is no right to secede. That this state shall ever remain a member of the American Union; that the people thereof are part of the American nation; that there is no right on the part of the state to secede, and that all attempts, from whatever source or upon whatever pretext, to dissolve said union, or to sever said nation, ought to be resisted with the whole power of the state.

Const. 1868.

Sec. 5. Of allegiance to the United States government. That every citizen of this state owes paramount allegiance to the constitution and government of the United States, and that no law or ordinance of the state in contravention or subversion thereof can have any binding force.

Const. 1868.

Sec. 6. Public debt; bonds issued under ordinance of convention of 1868, 68-69, 69-70, declared invalid; exception. The state shall never assume or pay, or authorize the collection of any debt or obligation, express or implied, incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; nor shall the general assembly assume or pay, or authorize the collection of any tax to pay, either directly or indirectly, expressed or implied, any debt or bond incurred, or issued, by authority of the convention of the year one thousand eight hundred and sixty-eight, nor any debt or bond incurred or issued by the legislature of the year one thousand eight hundred and sixty-eight, either at its special session of the year one thousand eight hundred and sixty-eight or at its regular sessions of the years one thousand eight hundred and sixty-eight and one thousand eight hundred and sixty-nine, and one thousand eight hundred and sixty-nine and one thousand eight hundred and seventy, except the bonds issued to fund the interest on the old debt of the state, unless the proposing to pay the same shall have first been submitted to the people and by them ratified by the vote of a majority of all the qualified voters of the state, at a regular election held for that purpose.

Const. 1868; 1872-3, c. 85; 1879, c. 268.

Const. I, s. 6—Annot.

Comrs. v. Snuggs, 121-409; Baltzer v. State, 104-265; Horne v. State, 84-362; Brickell v. Comrs., 81-240; Davis v. Comrs., 72-441; Lance v. Hunter, 72-178; Logan v. Plummer, 70-388; Rand v. State, 65-197; R. R. v. Holden, 63-414; Galloway v. Jenkins, 63-152.

Const. I, s. 7.

Sec. 7. Exclusive emoluments, etc. No man or set of men are entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services.

Const. 1868; Const. 1776, Decl. Rights, s. 3.

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Power Co. v. Power Co., 175-668, 171-248; Reid v. R. R., 162-355; State v. Perry, 151-661; St. George v. Hardie, 147-88; State v. Cantwell, 142-604; In re Spease Ferry, 138-219; Bray v. Williams, 137-391; Mial v. Ellington, 134-131; Ewbank v. Turner, 134-82; State v. Biggs, 133-729; Jones v. Comrs., 130-451; Hancock v. R. R., 124-255; Motley v. Warehouse Co., 122-350, 124-232; State v. Call, 121-645; Broadfoot v. Fayetteville, 121-418; Rowland v. Loan Assn., 116-879; R. R. Comrs. v. Tel. Co., 113-213; State v. Van Doran, 109-864; State v. Stovall, 103-416; Gregory v. Forbes, 96-77; Bridge Co. v. Comrs., 81-491; State v. Morris, 77-512; Simonton v. Lanier, 71-503; Barrington v. Ferry Co., 69-165; Kingsbury v. R. R., 66-284; Long v. Beard, 7-57; Bank v. Taylor, 6-266.

Sec. 8. The legislative, executive and judicial powers distinct. The legislative, executive and supreme judicial powers of the government ought to be forever separate and distinct from each other.

Const. 1868; Const. 1776, Decl. Rights, s. 4.

Lee v. Beard, 146-361; State v. Turner, 143-641; White v. Auditor, 126-605; Bird v. Gilliam, 125-79; Wilson v. Jordan, 124-705; Miller v. Alexander, 122-718; Garner v. Worth, 122-257; Caldwell v. Wilson, 121-476; Carr v. Coke, 116-236; Goodwin v. Fertilizer Works, 119-120; In re Sultan, 115-62; Herndon v. Ins. Co., 111-386; Horton v. Green, 104-401; Rencher v. Anderson, 93-105; Burton v. Spiers, 92-503; In re Oldham, 89-23; Brown v. Turner, 70-93; Railroad v. Jenkins, 68-503; Barnes v. Barnes, 53-372; Houston v. Bogle, 32-504; Hoke v. Henderson, 15-1; Robinson v. Barfield, 6-391.

Sec. 9. Of the power of suspending laws. All power of suspending laws, or the execution of laws, by any authority, without the consent of the representatives of the people, is injurious to their rights and ought not to be exercised.

Const. 1868; Const. 1776, Decl. Rights, s. 5.

Jones v. Comrs., 130-470; Abbott v. Beddingfield, 125-268 (dissenting opinion); White v. Auditor, 126-605.

Sec. 10. Elections free. All elections ought to be free.

Const. 1868; Const. 1776, Decl. Rights, s. 6.

Sec. 11. In criminal prosecutions. In all criminal prosecutions every man has the right to be informed of the accusation against him and to confront the accusers and witnesses with other testimony, and to have counsel for his defense, and not be compelled to give evidence against himself or to pay costs, jail fees, or necessary witness fees of the defense, unless found guilty.

Const. 1868; Const. 1776, Decl. Rights, s. 7.

State v. Neville, 175-731; State v. Fowler, 172-905; State v. Cherry, 154-624; State v. Dry, 152-813; State v. Whedbee, 152-770; State v. Leeper, 146-655; State v. Cline, 146-640; State v. Railway, 145-495; State v. Dowdy, 145-433; State v. Harris, 145-456; State v. Hodge, 142-683; State v. Cole, 132-1073; In re Briggs, 135-118; Sheek v. Sain, 127-266; State v. Mitchell, 119-785; Smith v. Smith, 116-386; Holt v. Warehouse Co., 116-488; State v. Shade, 115-759; State v. Massey, 104-880; State v. Cannady, 78-540; State v. Morris, 84-756; State v. Hodson, 74-153; State v. Collins, 70-247; State v. Alman, 64-366; State v. Thomas, 64-76; State v. Tilghman, 33-513.

Sec. 12. Answers to criminal charges. No person shall be put to answer any criminal charge, except as hereinafter allowed, but by indictment, presentment or impeachment.

Const. 1868; Const. 1776, Decl. Rights, s. 8.

State v. Newell, 172-933; State v. Hyman, 164-411; State v. Harris, 145-456; Ex parte McCown, 139-95; State v. Lytle, 138-742; State v. Hunter, 106-800; State v. Dunn, 95-699; State v. Powell, 86-642; State v. Moore, 104-750; State v. Cannady, 78-540; Kane v. Haywood, 66-31; State v. Simons, 68-379; State v. Moss, 47-68.

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Sec. 13. Right of jury. No person shall be convicted of any crime but by the unanimous verdict of a jury of good and lawful men in open court. The legislature may, however, provide other means of trial for petty misdemeanors, with the right of appeal.

Const. 1868; Const. 1776, Decl. Rights, s. 9.

Jones v. Brinkley, 174-23; State v. Newell, 172-933; State v. Hyman, 164-411; State v. Rogers, 162-656; State v. Brittain, 143-668; Ex parte McCown, 139-95; State v. Lytle, 138-742; State v. Thornton, 136-616; Hargett v. Bell, 134-396; Smith v. Paul, 133-68; State v. Ostwalt, 118-1211; State v. Gadberry, 117-818; State v. Whitaker, 114-819; State v. Best, 111-646; State v. Cutshall, 110-543; State v. Hunter, 106-800; State v. Dunn, 95-698; State v. Powell, 97-417; State v. Divine, 98-781; State v. Powell, 86-642; State v. Dudley, 83-661; State v. Cannady, 78-541; State v. Dixon, 75-275; Barnes v. Barnes, 53-366; State v. Moss, 47-68.

Sec. 14. Excessive bail. Excessive bail should not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.

Const. 1868; Const. 1776, Decl. Rights, s. 10. See English Bill of Rights (1689) c. 1, s. 10.

State v. Smith, 174-804; State v. Woodlief, 172-885; State v. Blake, 157-608; State v. Lance, 149-551; State v. Farrington, 141-844; State v. Hanby, 126-1066; Bryan v. Patrick, 124-661; State v. Ballard, 122-1025; State v. Apple, 121-585; State v. Reid, 106-716; State v. Pettie, 80-369; State v. Cannady, 78-543; State v. Driver, 78-423; State v. Reid, 18-377.

Sec. 15. General warrants. General warrants, whereby any officer or messenger may be commanded to search suspected places, without evidence of the act committed, or to seize any person or persons not named, whose offense is not particularly described and supported by evidence, are dangerous to liberty and ought not to be granted.

Const. 1868; Const. 1776, Decl. Rights, s. 11.

Brewer v. Wynne, 163-319; State v. Fowler, 172-905.

Sec. 16. Imprisonment for debt. There shall be no imprisonment for debt in this state, except in cases of fraud.

Const. 1868; Const. 1776, Decl. Rights, s. 39.

State v. Williams, 150-802; Ledford v. Emerson, 143-527; State v. Morgan, 141-726; State v. Torrence, 127-550; Stewart v. Bryan, 121-49; Lockhart v. Bear, 117-301; Preiss v. Cohen, 117-59; Fertilizer Co. v. Grubbs, 114-471; Burgwyn v. Hall, 108-490; State v. Earnhardt, 107-789; State v. Norman, 110-489; Winslow v. Winslow, 95-24; Kiney v. Lougenour, 97-325; Long v. McLean, 88-3; State v. Beasley, 75-212; Melvin v. Melvin, 72-384; Daniel v. Owen, 72-340; State v. Davis, 82-610; State v. Wallin, 89-578; State v. Cannady, 78-539; Pain v. Pain, 80-322; Moore v. Mullen, 77-327; Moore v. Green, 73-394; State v. Green, 71-173; State v. Palin, 63-471; Bunting v. Wright, 61-295; Burton v. Dickens, 7-103.

Sec. 17. No person taken, etc., but by law of land. No person ought to be taken, imprisoned, or disseized of his freehold, liberties or privileges, or outlawed or exiled, or in any manner deprived of his life, liberty or property, but by the law of the land.

Const. 1868; Const. 1776, Decl. Rights, s. 12; Mag. Carta (1215), c. 39, (1225) c. 29.

Parker v. Comrs., 178-92; Comrs. v. Boring, 175-105; Comrs. v. State Treasurer, 174-141; Lang v. Development Co., 169-662; State v. Collins, 169-323; State v. Bullock, 161-223; Dalton v. Brown, 159-175; Lawrence v. Hardy, 151-123; Starnes v. Mfg. Co., 147-556; Caldwell Land, etc., Co. v. Smith, 146-199; State v. Williams, 146-618; Dewey v. R. R., 142-392; Anderson v. Wilkins, 142-154; State v. Morgan, 141-726; Daniels v. Home, 139-237; State v. Jones, 139-613; Cozard v. Hardware Co., 139-296; Porter v. Armstrong,

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139-179; *Ex parte McCown*, 139-95; *Mial v. Ellington*, 134-172; *Lumber Co. v. Lumber Co.*, 135-742; *Parish v. Cedar Co.*, 133-478; *Jones v. Comrs.*, 130-461; *Dyer v. Ellington*, 126-941; *State v. Hill*, 126-1139; *Herring v. Pugh*, 126-852; *Hutton v. Webb*, 124-479; 126-897; *Southport v. Stanly*, 125-464; *Hogan v. Brown*, 125-251; *Morris v. House*, 125-559; *Day's Case*, 124-362; *Caldwell v. Wilson*, 121-477; *Wood v. Bellamy*, 120-212; *Hilliard v. Asheville*, 118-845; *Call v. Wilkesboro*, 115-337; *State v. Warren*, 113-683; *Lance v. Harris*, 112-480; *Williams v. Johnson*, 112-435; *Bass v. Navigation Co.*, 111-439; *Staton v. R. R.*, 111-278; *State v. Cutshall*, 110-543; *State v. Hunter*, 106-800; *Moose v. Carson*, 104-431; *London v. Headen*, 76-72; *Rhea v. Hampton*, 101-53; *State v. Wilson*, 107-865; *Woodard v. Blue*, 103-109; *Railroad v. Ely*, 95-77; *Winslow v. Winslow*, 95-24; *Worth v. Cox*, 89-44; *Whitehead v. Latham*, 83-232; *Vann v. Pipkin*, 77-410; *State v. Morris*, 77-512; *Whitehead v. R. R.*, 87-255; *Bridge Co. v. Comrs.*, 81-491; *Pool v. Trexler*, 76-297; *Privett v. Whitaker*, 73-554; *State v. Dixon*, 75-275; *Wilson v. Charlotte*, 74-756; *State v. Mooney*, 74-100; *Brown v. Turner*, 70-93; *King v. Hunter*, 65-603; *Bank v. Jenkins*, 64-719; *Norfleet v. Cromwell*, 70-634; *Johnston v. Rankin*, 70-550; *Franklin v. Vannoy*, 66-151; *Sedberry v. Comrs.*, 66-486; *Miller v. Gibbon*, 63-635; *Schenck ex parte*, 65-353; *Koonce v. Wallace*, 52-194; *Barnes v. Barnes*, 53-372; *Cotten v. Ellis*, 52-545; *Cornelius v. Glen*, 52-512; *State v. Glen*, 52-321; *Stanmire v. Taylor*, 48-207; *State v. Matthews*, 48-452; *McNamara v. Kearns*, 24-66; *Houston v. Bogle*, 32-496; *State v. Allen*, 24-183; *Mills v. Williams*, 33-558; *State v. Johnson*, 33-647; *R. R. v. Davis*, 19-451; *Hoke v. Henderson*, 15-1; *Pipkin v. Wynne*, 13-402; *Hamilton v. Adams*, 6-161; *Oats v. Darden*, 5-500; *University v. Foy*, 5-58, 3-310.

See, also, section 19 of this article.

Sec. 18. Persons restrained of liberty. Every person restrained of his liberty is entitled to a remedy to inquire into the lawfulness thereof, and to remove the same, if unlawful; and such remedy ought not to be denied or delayed.

Const. 1868; Const. 1776, Decl. Rights, s. 13.

Harkins v. Cathey, 119-663; *State v. Herndon*, 107-935; *In re Schenck*, 74-607.

Sec. 19. Controversies at law respecting property. In all controversies at law respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and ought to remain sacred and inviolable.

Const. 1868; Const. 1776, Decl. Rights, s. 14.

In re Stone, 176-336; *Crews v. Crews*, 175-168; *Walls v. Strickland*, 174-298; *Silvey v. R. R.*, 172-110; *State v. Rogers*, 162-656; *Williams v. R. R.*, 140-623; *Kearns v. R. R.*, 139-482; *Smith v. Paul*, 133-66; *Boutten v. R. R.*, 128-340; *Caldwell v. Wilson*, 121-465; *Wilson v. Featherstone*, 120-447; *Harkins v. Cathey*, 119-662; *State v. Mitchell*, 119-786; *Driller Co. v. Worth*, 117-517; *McQueen v. Bank*, 111-515; *Smith v. Hicks*, 108-248; *Lassiter v. Upchurch*, 107-411; *Railroad v. Parker*, 105-246; *Stevenson v. Felton*, 99-58; *Harris v. Shaffer*, 92-30; *Grant v. Hughes*, 96-177; *Pasour v. Lineberger*, 90-159; *Worthy v. Shields*, 90-192; *Wessel v. Rathjohn*, 89-377; *Grant v. Reese*, 82-72; *Chasteen v. Martin*, 81-51; *Overby v. Association*, 81-62; *Bernheim v. Waring*, 79-56; *Atkinson v. Whitehead*, 77-418; *Perry v. Tupper*, 77-413; *Womble v. Fraps*, 77-198; *Wilson v. Charlotte*, 74-756; *Armfield v. Brown*, 73-81; *Lippard v. Troutman*, 72-551; *Isler v. Murphy*, 71-436; *Witkowsky v. Wasson*, 71-460; *Pearson v. Caldwell*, 70-291; *Armfield v. Brown*, 70-27; *Green v. Castlebury*, 70-20; *Maxwell v. Maxwell*, 70-267; *Klutts v. McKenzie*, 65-102; *Andrews v. Pritchett*, 66-387; *White v. White*, 15-257; *Smith v. Campbell*, 10-590; *Bayard v. Singleton*, 1-5.

Sec. 20. Freedom of the press. The freedom of the press is one of the great bulwarks of liberty, and therefore ought never to be restrained, but every individual shall be held responsible for the abuse of the same.

Const. 1868; Const. 1776, Decl. Rights, s. 15.

Osborn v. Leach, 135-628; *Cowan v. Fairbrother*, 118-406.

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Sec. 21. Habeas corpus. The privileges of the writ of habeas corpus shall not be suspended.

Const. 1868.

Ex parte Moore, 64-802

Sec. 22. Property qualification. As political rights and privileges are not dependent upon, or modified by, property, therefore no property qualification ought to affect the right to vote or hold office.

Const. 1868.

Wilson v. Charlotte, 74-756.

Sec. 23. Representation and taxation. The people of the state ought not to be taxed or made subject to the payment of any impost or duty without the consent of themselves, or their representatives in general assembly, freely given.

Const. 1868; Const. 1776, Decl. Rights, s. 16.

State v. Wheeler, 141-773; Winston v. Taylor, 99-210; Moore v. Fayetteville, 80-154; Worth v. Comrs., 60-617.

Sec. 24. Militia and the right to bear arms. A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed; and, as standing armies in time of peace are dangerous to liberty, they ought not to be kept up, and the military should be kept under strict subordination to, and governed by, the civil power. Nothing herein contained shall justify the practice of carrying concealed weapons, or prevent the legislature from enacting penal statutes against said practice.

Const. 1868; Const. 1776, Decl. Rights, s. 17; Convention 1875.

State v. Barrett, 138-637; State v. Boone, 132-1107; State v. Reams, 121-556; State v. Speller, 86-697.

Sec. 25. Right of the people to assemble together. The people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the legislature for redress of grievances. But secret political societies are dangerous to the liberties of a free people, and should not be tolerated.

Const. 1868; Const. 1776, Decl. Rights, s. 18; Convention 1875.

Sec. 26. Religious liberty. All men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority should, in any case whatever, control or interfere with the rights of conscience.

Const. 1868; Const. 1776, Decl. Rights, s. 19.

Rodman v. Robinson, 134-503; Lord v. Hardie, 82-241; Melvin v. Easley, 52-356.

Sec. 27. Education. The people have the right to the privilege of education, and it is the duty of the state to guard and maintain that right.

Const. 1868.

Collie v. Comrs., 145-170, overruling Barksdale v. Comrs., 93-483; Lowery v. School Trustees, 140-33; Bear v. Comrs., 124-212.

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Sec. 28. Elections should be frequent. For redress of grievances, and for amending and strengthening the laws, elections should be often held.

Const. 1868; Const. 1776, Decl. Rights, s. 20.

Sec. 29. Recurrence to fundamental principles. A frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty.

Const. 1868; Const. 1776, Decl. Rights, s. 21.

Sec. 30. Hereditary emoluments, etc. No hereditary emoluments, privileges or honors ought to be granted or conferred in this state.

Const. 1868; Const. 1776, Decl. Rights, s. 22.

State v. Cantwell, 142-614; Bryan v. Patrick, 124-661; Bridge Co. v. Comrs., 81-504.

Sec. 31. Perpetuities, etc. Perpetuities and monopolies are contrary to the genius of a free state, and ought not to be allowed.

Const. 1868; Const. 1776, Decl. Rights, s. 23.

Allen v. Reidsville, 178-513; State v. Perry, 151-661; St. George v. Hardie, 147-88; State v. Cantwell, 142-614; In re Spease Ferry, 138-259; State v. Biggs, 133-729; Robinson v. Lamb, 126-492; Garsed v. Greensboro, 126-160; Bennett v. Comrs., 125-468; Bryan v. Patrick, 124-661; Guy v. Comrs., 122-471; Thrift v. Elizabeth City, 122-31; Railway v. Railway, 114-725; State v. Moore, 104-718; Hughes v. Hodges, 102-236; Bridge Co. v. Comrs., 81-504; Railroad v. Reid, 64-155; Simonton v. Lanier, 71-503; State v. McGowen, 37-9; State v. Gerrard, 37-210; Griffin v. Graham, 8-96; Bank v. Taylor, 6-266.

Sec. 32. Ex post facto laws. Retrospective laws, punishing acts committed before the existence of such laws, and by them only declared criminal, are oppressive, unjust and incompatible with liberty; wherefore no ex post facto law ought to be made. No law taxing retrospectively sales, purchases, or other acts previously done ought to be passed.

Const. 1868; Const. 1776, Decl. Rights, s. 24.

State v. Broadway, 157-598; Penland v. Barnard, 146-378; Anderson v. Wilkins, 142-154; Robinson v. Lamb, 129-16; City of Wilmington v. Cronly, 122-383; Culbreth v. Downing, 121-205; Morrison v. McDonald, 113-327; Kelly v. Fleming, 113-133; Lowe v. Harris, 112-472; State v. Ramsour, 113-642; Gilchrist v. Middleton, 108-705; Leak v. Gay, 107-468; Williams v. Weaver, 94-134; State v. Littlefield, 93-614; Burton v. Speers and Clark, 92-503; King v. Foscue, 91-116; Strickland v. Draughan, 91-103; Wilkerson v. Buchanan, 83-296; Whitehead v. Latham, 83-232; Tabor v. Ward, 83-291; Pearsall v. Kenan, 79-472; Lilly v. Purcell, 78-82; Young v. Henderson, 76-420; Libbett v. Maulsby, 71-345; Etheridge v. Vernoy, 71-184; Franklin v. Vannoy, 66-145; Johnson v. Winslow, 64-27; Jacobs v. Smallwood, 63-112; State v. Keith, 63-144; Robeson v. Brown, 63-554; State v. Bell, 61-76; Hinton v. Hinton, 61-410; Cooke v. Cooke, 61-583; Parker v. Shannonhouse, 61-209; Barnes v. Barnes, 53-366; State v. Bond, 49-9; Phillips v. Cameron, 48-391; Salter v. Bryan, 26-494; Taylor v. Harrison, 13-374; Oats v. Darden, 5-500.

Sec. 33. Slavery prohibited. Slavery and involuntary servitude, otherwise than for crime, whereof the parties shall have been duly convicted, shall be, and are hereby, forever prohibited within the state.

Const. 1868.

State v. Hairston, 63-451.

Sec. 34. State boundaries. The limits and boundaries of the state shall be and remain as they now are.

Const. 1868; Const. 1776, Decl. Rights, s. 25.

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Sec. 35. Courts shall be open. All courts shall be open; and every person for an injury done him in his lands, goods, person, or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay.

Const. 1868.

Osborn v. Leach, 135-628; Jones v. Comrs., 130-461; Driller Co. v. Worth, 118-746; Dunn v. Underwood, 116-526; Hewlett v. Nutt, 79-263.

Sec. 36. Soldiers in time of peace. No soldier shall in time of peace be quartered in any house without the consent of the owner; nor in time of war, but in a manner prescribed by law.

Const. 1868.

Sec. 37. Other rights of the people. This enumeration of rights shall not be construed to impair or deny others retained by the people; and all powers not herein delegated remain with the people.

Const. 1868.

State v. Williams, 146-618; Daniels v. Homer, 139-237; Thrift v. Elizabeth City, 122-38; Railroad v. Holden, 63-410; Nichols v. McKee, 68-430; State v. Keith, 63-144; Railroad v. Reid, 64-155.

ARTICLE II

LEGISLATIVE DEPARTMENT

Section 1. Two branches. The legislative authority shall be vested in two distinct branches, both dependent on the people, to wit: a senate and house of representatives.

Const. 1868; Const. 1776, s. 1.

Wilson v. Jordan, 124-719; Comrs. v. Call, 123-323.

Sec. 2. Time of assembly. The senate and house of representatives shall meet biennially on the first Wednesday after the first Monday in January next after their election; and when assembled shall be denominated the general assembly. Neither house shall proceed upon public business unless a majority of all the members are actually present.

Const. 1868; 1872-3, c. 82; Convention 1875; Const. 1776, ss. 4, 46; Convention 1835, art. 1, s. 4, cl. 7.

Herring v. Pugh, 126-862.

Sec. 3. Number of senators. The senate shall be composed of fifty senators, biennially chosen by ballot.

Const. 1868; Convention 1835, art. 1, s. 1, cl. 1.

Sec. 4. Regulations in relation to districting the state for senators. The senate districts shall be so altered by the general assembly, at the first session after the return of every enumeration by order of congress, that each senate district shall contain, as near as may be, an equal number of inhabitants, ex-

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cluding aliens and indians not taxed, and shall remain unaltered until the return of another enumeration, and shall at all times consist of contiguous territory; and no county shall be divided in the formation of a senate district, unless such county shall be equitably entitled to two or more senators.

Const. 1868; 1872-3, c. 81.

Sec. 5. Regulations in relation to appointment of representatives. The house of representatives shall be composed of one hundred and twenty representatives, biennially chosen by ballot, to be elected by the counties respectively, according to their population, and each county shall have at least one representative in the house of representatives, although it may not contain the requisite ratio of representation; this apportionment shall be made by the general assembly at the respective times and periods when the districts for the senate are hereinbefore directed to be laid off.

Const. 1868; 1872-3, c. 82; Convention 1835, art. 1, s. 1, cls. 2, 3.

Comrs. v. Ballard, 69-18; Mills v. Williams, 33-563.

Sec. 6. Ratio of representation. In making the apportionment in the house of representatives, the ratio of representation shall be ascertained by dividing the amount of the population of the state, exclusive of that comprehended within those counties which do not severally contain the one hundred and twentieth part of the population of the state, by the number of representatives, less the number assigned to such counties; and in ascertaining the number of the population of the state, aliens and indians not taxed shall not be included. To each county containing the said ratio and not twice the said ratio there shall be assigned one representative; to each county containing two but not three times the said ratio, there shall be assigned two representatives, and so on progressively, and then the remaining representatives shall be assigned severally to the counties having the largest fractions.

Const. 1868; Convention 1835, art. 1, s. 1, cl. 4.

Moffitt v. Asheville, 103-237; Comrs. v. Ballard, 69-18.

Sec. 7. Qualifications for senators. Each member of the senate shall not be less than twenty-five years of age, shall have resided in this state as a citizen two years, and shall have usually resided in the district for which he was chosen one year immediately preceding his election.

Const. 1868.

Sec. 8. Qualifications for representatives. Each member of the house of representatives shall be a qualified elector of the state, and shall have resided in the county for which he is chosen for one year immediately preceding his election.

Const. 1868.

Sec. 9. Election of officers. In the election of all officers, whose appointment shall be conferred upon the general assembly by the constitution, the vote shall be viva voce.

Const. 1868; Convention 1835, art. 1, s. 4, cl. 1.

Cherry v. Burns, 124-766; Stanford v. Ellington, 117-161.

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Sec. 10. Powers in relation to divorce and alimony. The general assembly shall have power to pass general laws regulating divorce and alimony, but shall not have power to grant a divorce or secure alimony in any individual case.

Const. 1868; Convention 1835, art. 1, s. 4, cl. 3.

Cooke v. Cooke, 164-272; In re Boyett, 136-415; Ladd v. Ladd, 121-118; Baity v. Cranfill, 91-293.

Sec. 11. Private laws in relation to names of persons, etc. The general assembly shall not have power to pass any private law to alter the name of any person, or to legitimate any person not born in lawful wedlock, or to restore to the rights of citizenship any person convicted of an infamous crime, but shall have power to pass general laws regulating the same.

Const. 1868; Convention 1835, art. 1, s. 4, cl. 4.

Sec. 12. Thirty days notice shall be given anterior to passage of private laws. The general assembly shall not pass any private law, unless it shall be made to appear that thirty days notice of application to pass such a law shall have been given, under such direction and in such manner as shall be provided by law.

Const. 1868; Convention 1835, art. 1, s. 4, cl. 5.

Power Co. v. Power Co., 175-668; Cox v. Comrs., 146-584; Bray v. Williams, 137-390; Comrs. v. Coke, 116-235; Gatlin v. Tarboro, 78-119; Brodnax v. Comrs., 64-244.

Sec. 13. Vacancies. If vacancies shall occur in the general assembly by death, resignation or otherwise, writs of elections shall be issued by the governor under such regulations as may be prescribed by law.

Const. 1868; Convention 1835, art. 1, s. 4, cl. 6.

Sec. 14. Revenue. No law shall be passed to raise money on the credit of the state, or to pledge the faith of the state, directly or indirectly, for the payment of any debt, or to impose any tax upon the people of the state, or allow the counties, cities or towns to do so, unless the bill for the purpose shall have been read three several times in each house of the general assembly and passed three several readings, which readings shall have been on three different days, and agreed to by each house respectively, and unless the yeas and nays on the second and third readings of the bill shall have been entered on the journal.

Const. 1868.

Road Com. v. Comrs., 178-61; Guire v. Comrs., 177-516; Wagstaff v. Highway Com., 177-354; Woodall v. Highway Com., 176-377; Wagstaff v. Highway Com., 174-377; Claywell v. Comrs., 173-657; Brown v. Comrs., 173-598; Cottrell v. Lenoir, 173-138; Hargrave v. Comrs., 168-626; Gregg v. Comrs., 162-479; Pritchard v. Comrs., 160-476, 159-636; Russell v. Troy, 159-366; Comrs. v. Comrs., 157-515; Comrs. v. Bank, 152-387; Tyson v. Salisbury, 151-468; Bank v. Lacy, 151-3; Battle v. Lacy, 150-573; Wittkowsky v. Comrs., 150-90; Lutterloh v. Fayetteville, 149-65; Cox v. Comrs., 146-584; Improvement Co. v. Comrs., 146-353; Comrs. v. Trust Co., 143-110; Fortune v. Comrs., 140-329; Comrs. v. Stafford, 138-453; Bray v. Williams, 137-390; Graves v. Comrs., 135-49; Brown v. Stewart, 134-357; Wilson v. Markley, 133-616; Debnam v. Chitty, 131-657; Hooker v. Greenville, 130-293; Cotton Mills v. Waxhaw, 130-293; Armstrong v. Stedman, 130-219; Comrs. v. DeRossett, 129-275; Black v. Comrs., 129-122; Glenn v. Wray, 126-730; Edgerton v. Water Co., 126-96; Smathers v. Comrs., 125-480; Slocumb v. Fayetteville, 125-362; Comrs. v. Payne, 123-486, 123-432; McGuire v. Williams, 123-349; Comrs. v. Call, 123-308; Charlotte

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v. Shepard, 122-602; Robinson v. Goldsboro, 122-211; Rodman v. Washington, 122-39; Mayo v. Comrs., 122-5; Comrs. v. Snuggs, 121-394; Bank v. Comrs., 119-214; Bank v. Comrs., 116-339; Jones v. Comrs., 107-265; Wood v. Oxford, 97-227; Galloway v. Jenkins, 63-147.

Sec. 15. Entails. The general assembly shall regulate entails in such a manner as to prevent perpetuities.

Const. 1868; Const. 1776, s. 43.

Sec. 16. Journals. Each house shall keep a journal of its proceedings, which shall be printed and made public immediately after the adjournment of the general assembly.

Const. 1868; Const. 1776, s. 46.

Wilson v. Markley, 133-616; Carr v. Coke, 116-234.

Sec. 17. Protest. Any member of either house may dissent from, and protest against, any act or resolve which he may think injurious to the public, or any individual, and have the reasons of his dissent entered on the journal.

Const. 1868; Const. 1776, s. 45.

Sec. 18. Officers of the house. The house of representatives shall choose their own speaker and other officers.

Const. 1868; Const. 1776, s. 10.

Nichols v. McKee, 68-432.

Sec. 19. President of the senate. The lieutenant-governor shall preside in the senate, but shall have no vote unless it may be equally divided.

Const. 1868.

Sec. 20. Other senatorial officers. The senate shall choose its other officers and also a speaker (pro tempore) in the absence of the lieutenant-governor, or when he shall exercise the office of governor.

Const. 1868; Const. 1776, s. 10.

Nichols v. McKee, 68-432.

Sec. 21. Style of the acts. The style of the acts shall be: "The general assembly of North Carolina do enact."

Const. 1868.

State v. Patterson, 98-664.

Sec. 22. Powers of the general assembly. Each house shall be judge of the qualifications and election of its own members, shall sit upon its own adjournment from day to day, prepare bills to be passed into laws; and the two houses may also jointly adjourn to any future day, or other place.

Const. 1868; Const. 1776, s. 10.

Sec. 23. Bills and resolutions to be read three times, etc. All bills and resolutions of a legislative nature shall be read three times in each house before they pass into laws, and shall be signed by the presiding officers of both houses.

Const. 1868; Const. 1776, s. 11.

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State v. Patterson, 134-620; Wilson v. Markley, 133-616; Cotton Mills v. Waxhaw, 130-293; Smathers v. Comrs., 125-486; Comrs. v. Snuggs, 121-400; Russell v. Ayer, 120-211; Bank v. Comrs., 119-222; Cook v. Mears, 116-592; Carr v. Coke, 116-234; Scarborough v. Robinson, 81-409.

Sec. 24. Oath for members. Each member of the general assembly, before taking his seat, shall take an oath or affirmation that he will support the constitution and laws of the United States, and the constitution of the state of North Carolina, and will faithfully discharge his duty as a member of the senate or house of representatives.

Const. 1868; Const. 1776, s. 12.

Sec. 25. Terms of office. The terms of office for senators and members of the house of representatives shall commence at the time of their election.

Const. 1868; Convention 1875.

Aderholt v. McKee, 65-259.

Sec. 26. Yeas and nays. Upon motion made and seconded in either house, by one-fifth of the members present, the yeas and nays upon any question shall be taken and entered upon the journals.

Const. 1868.

Sec. 27. Election for members of the general assembly. The election for members of the general assembly shall be held for the respective districts and counties, at the places where they are now held, or may be directed hereafter to be held, in such manner as may be prescribed by law, on the first Thursday in August, in the year one thousand eight hundred and seventy, and every two years thereafter. But the general assembly may change the time of holding the elections.

Const. 1868; Convention 1875.

Aderholt v. McKee, 65-259; Loftin v. Sowers, 65-251.

Sec. 28. Pay of members and officers of the general assembly; extra session. The members of the general assembly for the term for which they have been elected shall receive as a compensation for their services the sum of four dollars per day for each day of their session, for a period not exceeding sixty days; and should they remain longer in session, they shall serve without compensation. They shall also be entitled to receive ten cents per mile, both while coming to the seat of government and while returning home, the said distance to be computed by the nearest line or route of public travel. The compensation of the presiding officers of the two houses shall be six dollars per day and mileage. Should an extra session of the general assembly be called, the members and presiding officers shall receive a like rate of compensation for a period not exceeding twenty days.

Convention 1875.

Kendall v. Stafford, 178-461; Bank v. Worth, 117-153.

Sec. 29. Limitations upon power of general assembly to enact private or special legislation. The general assembly shall not pass any local, private, or special act or resolution relating to the establishment of courts inferior to the

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superior court; relating to the appointment of justices of the peace; relating to health, sanitation, and the abatement of nuisances; changing the names of cities, towns and townships; authorizing the laying out, opening, altering, maintaining, or discontinuing of highways, streets, or alleys; relating to ferries or bridges; relating to nonnavigable streams; relating to cemeteries; relating to the pay of jurors; erecting new townships, or changing township lines, or establishing or changing the lines of school districts; remitting fines, penalties, and forfeitures, or refunding moneys legally paid into the public treasury; regulating labor, trade, mining, or manufacturing; extending the time for the assessment or collection of taxes or otherwise relieving any collector of taxes from the due performance of his official duties or his sureties from liability; giving effect to informal wills and deeds; nor shall the general assembly enact any such local, private or special act by the partial repeal of a general law, but the general assembly may at any time repeal local, private or special laws enacted by it. Any local, private or special act or resolution passed in violation of the provisions of this section shall be void. The general assembly shall have power to pass general laws regulating matters set out in this section.

1915, c. 99. In effect Jan. 10, 1917. See *Reade v. Durham*, 173-668; *Mills v. Comrs.*, 175-215.

Davis v. Lenoir County, 178-668; *Comrs. v. Pruden*, 178-394; *Comrs. v. Trust Co.*, 178-170; *Martin County v. Trust Co.*, 178-26; *Parvin v. Comrs.*, 177-508; *Mills v. Comrs.*, 175-215; *Highway Com. v. Malone*, 173-685; *Richardson v. Comrs.*, 173-685; *Rankin v. Gaston County*, 173-683; *Reade v. Durham*, 173-668; *Brown v. Comrs.*, 173-598.

ARTICLE III

EXECUTIVE DEPARTMENT

Section 1. Officers of the executive department; terms of office. The executive department shall consist of a governor, in whom shall be vested the supreme executive power of the state; a lieutenant-governor, a secretary of state, an auditor, a treasurer, a superintendent of public instruction, and an attorney-general, who shall be elected for a term of four years by the qualified electors of the state, at the same time and places and in the same manner as members of the general assembly are elected. Their term of office shall commence on the first day of January next after their election, and continue until their successors are elected, and qualified: Provided, that the officers first elected shall assume the duties of their office ten days after the approval of this constitution by the congress of the United States, and shall hold their offices four years from and after the first day of January.

Const. 1868; Convention 1835, art II, s. 1.

Wilson v. Jordan, 124-719; *Rhyne v. Lipscombe*, 122-652; *Caldwell v. Wilson*, 121-476; *Winslow v. Morton*, 118-490; *Battle v. McIver*, 68-467; *Howerton v. Tate*, 68-546.

Sec. 2. Qualifications of governor and lieutenant-governor. No person shall be eligible as governor or lieutenant-governor unless he shall have attained the age of thirty years, shall have been a citizen of the United States five years, and shall have been a resident of this state for two years next before the election;

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nor shall the person elected to either of these two offices be eligible to the same office more than four years in any term of eight years, unless the office shall have been cast upon him as lieutenant-governor or president of the senate.

Const. 1868; Const. 1776, s. 15.

Sec. 3. Returns of elections. The return of every election for officers of the executive department shall be sealed up and transmitted to the seat of government by the returning officer, directed to the speaker of the house of representatives, who shall open and publish the same in the presence of a majority of the members of both houses of the general assembly. The persons having the highest number of votes respectively shall be declared duly elected; but if two or more be equal and highest in votes for the same office, then one of them shall be chosen by joint ballot of both houses of the general assembly. Contested elections shall be determined by a joint ballot of both houses of the general assembly, in such manner as shall be prescribed by law.

Const. 1868; Convention 1835, art. II, ss. 3, 4.

Winslow v. Morton, 118-486; O'Hara v. Powell, 80-108.

Sec. 4. Oath of office for governor. The governor, before entering upon the duties of his office, shall, in the presence of the members of both branches of the general assembly, or before any justice of the supreme court, take an oath or affirmation that he will support the constitution and laws of the United States and of the state of North Carolina, and that he will faithfully perform the duties appertaining to the office of governor to which he has been elected.

Const. 1868; Convention 1835, art. II, s. 5.

Sec. 5. Duties of governor. The governor shall reside at the seat of government of this state, and he shall, from time to time, give the general assembly information of the affairs of the state, and recommend to their consideration such measures as he shall deem expedient.

Const. 1868.

Sec. 6. Reprieves, commutations and pardons. The governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offenses (except in cases of impeachment), upon such conditions as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. He shall biennially communicate to the general assembly each case of reprieve, commutation or pardon granted, stating the name of each convict, the crime for which he was convicted, the sentence and its date, the date of commutation, pardon or reprieve, and the reasons therefor.

Const. 1868; Const. 1776, s. 19.

In re Williams, 149-436; State v. Bowman, 145-452; Herring v. Pugh, 126-862; In re McMahon, 125-40; State v. Mathis, 109-815; State v. Cardwell, 95-643; State v. Alexander, 76-231; State v. Mooney, 74-98; State v. Blalock, 61-242.

Sec. 7. Annual reports from officers of executive department and of public institutions. The officers of the executive department and of the public institutions of the state shall, at least five days previous to each regular session of

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the general assembly, severally report to the governor, who shall transmit such reports, with his message, to the general assembly; and the governor may, at any time, require information in writing from the officers in the executive department upon any subject relating to the duties of their respective offices, and shall take care that the laws be faithfully executed.

Const. 1868.

Arendell v. Worth, 125-122; *Welker v. Bledsoe*, 68-463; *Nichols v. McKee*, 68-435.

Sec. 8. Commander-in-chief. The governor shall be commander-in-chief of the militia of the state, except when they shall be called into the service of the United States.

Const. 1868; Const. 1776, s. 18.

Winslow v. Morton, 118-486.

Sec. 9. Extra session of general assembly. The governor shall have power on extraordinary occasions, by and with the advice of the council of state, to convene the general assembly in extra session by his proclamation, stating therein the purpose or purposes for which they are thus convened.

Const. 1868.

Sec. 10. Officers whose appointments are not otherwise provided for. The governor shall nominate, and by and with the advice and consent of a majority of the senators-elect, appoint all officers whose offices are established by this constitution and whose appointments are not otherwise provided for.

Const. 1868; Convention 1875.

Salisbury v. Croom, 167-223; *State v. Baskerville*, 141-811; *Day's Case*, 124-366; *Ewart v. Jones*, 116-570; *University v. McIver*, 72-76; *Cloud v. Wilson*, 72-155; *Battle v. McIver*, 68-467; *Nichols v. McKee*, 68-429; *Howerton v. Tate*, 68-546; *Rogers v. McGowan*, 68-520; *Badger v. Johnson*, 68-471; *Welker v. Bledsoe*, 68-457; *Clark v. Stanley*, 66-59; *State v. Pender*, 66-317; *Railroad v. Holden*, 63-410.

Sec. 11. Duties of the lieutenant-governor. The lieutenant-governor shall be president of the senate, but shall have no vote unless the senate be equally divided. He shall, whilst acting as president of the senate, receive for his services the same pay which shall, for the same period, be allowed to the speaker of the house of representatives; and he shall receive no other compensation except when he is acting as governor.

Const. 1868.

Sec. 12. In case of impeachment of governor, or vacancy caused by death or resignation. In case of the impeachment of the governor, his failure to qualify, his absence from the state, his inability to discharge the duties of his office, or in case the office of governor shall in anywise become vacant, the powers, duties and emoluments of the office shall devolve upon the lieutenant-governor until the disabilities shall cease or a new governor shall be elected and qualified. In every case in which the lieutenant-governor shall be unable to preside over the senate, the senators shall elect one of their own number president of their body; and the powers, duties and emoluments of the office of governor shall devolve upon him whenever the lieutenant-governor shall, for any reason, be prevented

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from discharging the duties of such office as above provided, and he shall continue as acting governor until the disabilities are removed or a new governor or lieutenant-governor shall be elected and qualified. Whenever, during the recess of the general assembly, it shall become necessary for the president of the senate to administer the government, the secretary of state shall convene the senate, that they may elect such president.

Const. 1868.

Rodwell v. Rowland, 137-626; Caldwell v. Wilson, 121-476.

Sec. 13. Duties of other executive officers. The respective duties of the secretary of state, auditor, treasurer, superintendent of public instruction and attorney-general shall be prescribed by law. If the office of any of said officers shall be vacated by death, resignation or otherwise, it shall be the duty of the governor to appoint another until the disability be removed or his successor be elected and qualified. Every such vacancy shall be filled by election at the first general election that occurs more than thirty days after the vacancy has taken place, and the person chosen shall hold the office for the remainder of the unexpired term fixed in the first section of this article.

Const. 1868.

Rodwell v. Rowland, 137-626; Sneed v. Bullock, 80-135; Cloud v. Wilson, 72-163; Clark v. Stanley, 66-59; Nichols v. McKee, 68-429; Battle v. McIver, 68-467; Boner v. Adams, 65-639.

Sec. 14. Council of state. The secretary of state, auditor, treasurer and superintendent of public instruction shall constitute, ex-officio, the council of state, who shall advise the governor in the execution of his office, and three of whom shall constitute a quorum; their advice and proceedings in this capacity shall be entered in a journal, to be kept for this purpose exclusively, and signed by the members present, from any part of which any member may enter his dissent; and such journal shall be placed before the general assembly when called for by either house. The attorney-general shall be, ex-officio, the legal adviser of the executive department.

Const. 1868; Const. 1776, s. 16.

Sec. 15. Compensation of executive officers. The officers mentioned in this article shall, at stated periods, receive for their services a compensation to be established by law, which shall neither be increased nor diminished during the time for which they shall have been elected, and the said officers shall receive no other emolument or allowance whatever.

Const. 1868.

Sec. 16. Seal of state. There shall be a seal of the state, which shall be kept by the governor, and used by him, as occasion may require, and shall be called "the Great Seal of the State of North Carolina." All grants and commissions shall be issued in the name and by the authority of the state of North Carolina, sealed with "the Great Seal of the State," signed by the governor and countersigned by the secretary of state.

Const. 1868; Const. 1776, ss. 17, 36.

Howell v. Hurley, 170-798; Richards v. Lumber Co., 158-54.

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Sec. 17. Department of agriculture, immigration and statistics. The general assembly shall establish a department of agriculture, immigration and statistics, under such regulations as may best promote the agricultural interests of the state, and shall enact laws for the adequate protection and encouragement of sheep husbandry.

Const. 1868; Convention 1875.

Cunningham v. Sprinkle, 124-638; Chemical Co. v. Board of Agriculture, 111-136.

ARTICLE IV

JUDICIAL DEPARTMENT

Section 1. Abolishes distinction between actions at law and suits in equity, and feigned issues. The distinctions between actions at law and suits in equity, and the forms of all such actions and suits, shall be abolished; and there shall be in this state but one form of action for the enforcement or protection of private rights or the redress of private wrongs, which shall be denominated a civil action; and every action prosecuted by the people of the state as a party, against a person charged with a public offense, for the punishment of the same, shall be termed a criminal action. Feigned issues shall also be abolished, and the fact at issue tried by order of court before a jury.

Const. 1868.

Tillotson v. Currin, 176-479; Jerome v. Setzer, 175-391; Hardware Co. v. Lewis, 173-290; Makuen v. Elder, 170-510; Fowle v. McLean, 168-537; Wilson v. Ins. Co., 155-173; Hauser v. Morrison, 146-248; Levin v. Gladstein, 142-484; Turner v. McKee, 137-259; Staton v. Webb, 137-38; Boles v. Caudle, 133-528; Parker v. Express Co., 132-131; Harrison v. Hargrove, 116-418; Peebles v. Gay, 115-41; Moore v. Beaman, 112-560; Hood v. Sudderth, 111-219; Markham v. Markham, 110-356; Conley v. R. R., 109-692; Vogelhan v. Smith, 95-254; Lumber Co. v. Wallace, 93-25; Blake v. Askew, 76-326; Abrams v. Cureton, 74-526; Bitting v. Thaxton, 72-541; Tidline v. Hickerson, 72-421; Belmont v. Reilly, 71-262; Froelich v. Express Co., 67-4; Harkey v. Houston, 65-137; Tate v. Powe, 64-647; State v. McIntosh, 64-607; Mitchell v. Henderson, 63-640; State v. Baker, 63-276.

See, also, under C. S., section 399.

Sec. 2. Division of judicial powers. The judicial power of the state shall be vested in a court for the trial of impeachments, a supreme court, superior courts, courts of justices of the peace, and such other courts inferior to the supreme court as may be established by law.

Const. 1868; Convention 1875.

State v. Collins, 151-648; Hauser v. Morrison, 146-248; Ex parte McCown, 139-105; State v. Lytle, 138-741; State v. Baskerville, 141-813; Mott v. Comrs., 126-869; State v. Gallop, 126-983; Rhyne v. Lipscombe, 122-650; Caldwell v. Wilson, 121-476; McDonald v. Morrow, 119-670; Ewart v. Jones, 116-572; Express Co. v. R. R., 111-463; Wool v. Saunders, 108-739; State v. Weddington, 103-364; State v. Speaks, 95-689; State v. Spurtin, 80-363; State v. Cherry, 72-123; State v. Ketchey, 70-621; State v. Davis, 69-495; Rowark v. Gaston, 67-292; Froelich v. Express Co., 67-1; State v. Pender, 66-313; Wilmington v. Davis, 63-583; Edenton v. Wool, 65-379; Washington v. Hammons, 76-34; State v. Threadgill, 76-17; State v. Baker, 63-278; McAdoo v. Benbow, 63-461.

Sec. 3. Trial court of impeachment. The court for the trial of impeachments shall be the senate. A majority of the members shall be necessary to a quorum,

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and the judgment shall not extend beyond removal from and disqualification to hold office in this state; but the party shall be liable to indictment and punishment according to law.

Const. 1868; Convention 1835, art. III, s. 1, cls. 2, 3.

Caldwell v. Wilson, 121-476.

Sec. 4. Impeachment. The house of representatives solely shall have the power of impeaching. No person shall be convicted without the concurrence of two-thirds of the senators present. When the governor is impeached the chief justice shall preside.

Const. 1868; Convention 1835, art. III, s. 1, cl. 3.

Sec. 5. Treason against the state. Treason against the state shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court. No conviction of treason or attainder shall work corruption of blood or forfeiture.

Const. 1868. See Const. U. S., art. III, s. 3.

Sec. 6. Supreme court justices. The supreme court shall consist of a chief justice and four associate justices.

Const. 1868; Convention 1875; 1887, c. 212.

Sec. 7. Terms of the supreme court. The terms of the supreme court shall be held in the city of Raleigh, as now, until otherwise provided by the general assembly.

Const. 1868; Convention 1875.

State v. Marsh, 134-197.

Sec. 8. Jurisdiction of supreme court. The supreme court shall have jurisdiction to review, upon appeal, any decision of the courts below, upon any matter of law or legal inference. And the jurisdiction of said court over "issues of fact" and "questions of fact" shall be the same exercised by it before the adoption of the constitution of one thousand eight hundred and sixty-eight, and the court shall have the power to issue any remedial writs necessary to give it a general supervision and control over the proceedings of the inferior courts.

Convention 1875. See Const. 1868, art. IV, s. 10.

R. R. v. Cherokee County, 177-86; Taylor v. Johnson, 171-84; State v. Tripp, 168-150; State v. Lee, 166-250; Page v. Page, 166-90; In re Wiggins, 165-457; Mott v. R. R., 164-367; Johnson v. R. R., 163-431; Pender v. Ins. Co., 163-98; Overman v. Lanier, 156-537; State v. Webb, 155-426; In re Holley, 154-163; Harvey v. R. R., 153-567; Stokes v. Cogdell, 153-181; In re Applicants for License, 143-1; Hollingsworth v. Skelding, 142-256; Slocumb v. Construction Co., 142-354; State v. Lilliston, 141-867; Brown v. Power Co., 140-348; Barker v. R. R., 137-222; State v. Marsh, 134-185; Mott v. Comrs., 126-869; Wilson v. Jordan, 124-719; State v. Hinson, 123-757; Harkins v. Cathey, 119-658; McDonald v. Morrow, 119-670; Carr v. Coke, 116-242; State v. Whitaker, 114-818; Express Co. v. R. R., 111-463; State v. Herndon, 107-934; Farrar v. Staton, 101-78; Rencher v. Anderson, 93-105; Railroad v. Warren, 92-620; Coates v. Wilkes, 92-381; Murrill v. Murrill, 90-120; Worthy v. Shields, 90-192; Young v. Rollins, 90-125; Wessel v. Rathjohn, 89-377; McMillan v. Baker, 85-291; Greensboro v. Scott, 84-184; Shields v. Whitaker, 82-516; Simmons v. Foscue, 81-86; Jones v. Boyd, 80-258; State v. McGimsey, 80-383; Battle v. Mayo, 102-435; In re Schenck, 74-609; Keener v. Finger, 70-42; Long v. Holt, 68-53;

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Rush v. Steamboat Co., 68-74; Isler v. Brown, 67-175; State v. Jefferson, 66-309; Rogers v. Goodwin, 64-279; McKimmon v. Faulk, 63-279; Biggs ex parte, 64-202; Heilig v. Stokes, 63-612; Foushee v. Pattershall, 67-453; Perry v. Shepherd, 78-85; Graham v. Skinner, 57-94.

See, also, C. S., section 1411.

Sec. 9. Claims against the state. The supreme court shall have original jurisdiction to hear claims against the state, but its decisions shall be merely recommendatory; no process in the nature of execution shall issue thereon; they shall be reported to the next session of the general assembly for its action.

Const. 1868.

Miller v. State, 134-272; Moody v. State Prison, 128-14; White v. Auditor, 126-598; Printing Co. v. Hoey, 124-795; Railroad v. Dortch, 124-675; Pate v. R. R., 122-878; Garner v. Worth, 122-250; Blount v. Simmons, 119-51; Burton v. Furman, 115-171; Cowles v. State, 115-173; Baltzer v. State, 109-187, 104-270; Martin v. Worth, 91-45; Clodfelter v. State, 86-51; Bain v. State, 86-49; Horne v. State, 82-382, 84-362; Sinclair v. State, 69-47; Bayne v. Jenkins, 66-358; Bledsoe v. State, 64-392; Reynolds v. State, 64-460; Rand v. State, 65-194; Battle v. Thompson, 65-408; Boner v. Adams, 65-644.

Sec. 10. Judicial districts for superior courts. The state shall be divided into nine judicial districts, for each of which a judge shall be chosen; and there shall be held a superior court in each county at least twice in each year, to continue for such time in each county as may be prescribed by law. But the general assembly may reduce or increase the number of districts.

Const. 1868; Convention 1875.

State v. Shuford, 128-588; Wilson v. Jordan, 124-705; Rhyne v. Lipscombe, 122-650; Ewart v. Jones, 116-578; State v. Spurtin, 80-363; State v. Taylor, 76-64; State v. Adair, 66-298.

Sec. 11. Residences of judges; rotation in judicial districts; special terms. Every judge of the superior court shall reside in the district for which he is elected. The judges shall preside in the courts of the different districts successively, but no judge shall hold the courts in the same district oftener than once in four years; but in case of the protracted illness of the judge assigned to preside in any district, or of any other unavoidable accident to him, by reason of which he shall be unable to preside, the governor may require any judge to hold one or more specified terms in said district in lieu of the judge assigned to hold the courts of the said district; and the general assembly may by general laws provide for the selection of special or emergency judges to hold the superior courts of any county or district when the judge assigned thereto, by reason of sickness, disability, or other cause, is unable to attend and hold said court, and when no other judge is available to hold the same. Such special or emergency judges shall have the power and authority of regular judges of the superior courts, in the courts which they are so appointed to hold; and the general assembly shall provide for their reasonable compensation.

Const. 1868; Convention 1875; 1915, c. 99. Last part of section, providing for "special or emergency judges," took effect Jan. 10, 1917. See Reade v. Durham, 173-668.

Watson v. R. R., 152-215; State v. Shuford, 128-588; Mott v. Comrs., 126-866; Rhyne v. Lipscombe, 122-650; State v. Turner, 119-841; McDonald v. Morrow, 119-670; Delafield v. Stafford, 114-239; State v. Lewis, 107-967; State v. Speaks, 95-689; State v. Bowman, 80-437; State v. McGimsey, 80-377; State v. Munroe, 80-373; State v. Watson, 75-136; State v. Ketchey, 70-622; Howes v. Mauney, 66-222; State v. Adair, 66-298; Myers v. Hamilton, 65-568.

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Sec. 12. Jurisdiction of courts inferior to supreme court. The general assembly shall have no power to deprive the judicial department of any power or jurisdiction which rightfully pertains to it as a coördinate department of the government; but the general assembly shall allot and distribute that portion of this power and jurisdiction which does not pertain to the supreme court among the other courts prescribed in this constitution or which may be established by law, in such manner as it may deem best; provide also a proper system of appeals; and regulate by law, when necessary, the methods of proceeding, in the exercise of their powers, of all the courts below the supreme court, so far as the same may be done without conflict with other provisions of this constitution.

Convention 1875.

State v. Little, 175-743; Cole v. Sanders, 174-112; Jones v. Brinkley, 174-23; Corp. Com. v. R. R., 170-560; Oil Co. v. Grocery Co., 169-521; State v. Brown, 159-467; State v. Collins, 151-648; State v. Shine, 149-480; Lee v. Beard, 146-361; Duckworth v. Mull, 143-469; In re Applicants for License, 143-1; State v. Baskerville, 141-813; Settle v. Settle, 141-564; Corp. Com. v. R. R., 139-126; Ex parte McCown, 139-105; State v. Lytle, 138-741; State v. Lew, 133-666; Brinkley v. Smith, 130-225; In re Gorham, 129-490; State v. Brown, 127-564; Mott v. Comrs., 126-868; State v. Davis, 126-1007; State v. Battle, 126-1036; McCall v. Webb, 125-243; Wilson v. Jordan, 124-690; State v. Ray, 122-1098; Pate v. R. R., 122-877; Tate v. Comrs., 122-661; Rhyne v. Lipscombe, 122-650; Malloy v. Fayetteville, 122-480; Caldwell v. Wilson, 121-477; McDonald v. Morrow, 119-670; Springer v. Shavender, 118-42; Ewart v. Jones, 116-575; Express Co. v. R. R., 111-463; State v. Flowers, 109-841; In re Deaton, 105-62; State v. Moore, 104-751; Walker v. Scott, 102-487; State v. Powell, 97-417; Bynum v. Powe, 97-374; Freight Discrimination Cases, 95-435; Rencher v. Anderson, 93-105; Murrill v. Murrill, 90-120; Cheek v. Watson, 90-302; In re Oldham, 89-23; Simpson v. Jones, 82-324; State v. Munroe, 80-373; State v. Spurtin, 80-362; Walton v. Walton, 80-26; Bratton v. Davidson, 79-423; Washington v. Hammond, 76-35; State v. Upchurch, 72-33; State v. Burk, 73-266; Bryan v. Rousseau, 71-194; Credle v. Gills, 65-192; Wilmington v. Davis, 63-582; Donaldson v. Waldrop, 63-507.

Sec. 13. In case of waiver of trial by jury. In all issues of fact, joined in any court, the parties may waive the right to have the same determined by a jury; in which case the finding of the judge upon the facts shall have the force and effect of a verdict by a jury.

Const. 1868.

Lumber Co. v. Lumber Co., 137-439; Wilson v. Featherstone, 120-447; Taylor v. Smith, 118-127; Driller Co. v. Worth, 117-518; Nissen v. Mining Co., 104-309; Battle v. Mayo, 102-434; Pasour v. Lineberger, 90-159; Keener v. Finger, 70-42; Armfield v. Brown, 70-29.

See, also, C. S., sections 568, 1502.

Sec. 14. Special courts in cities. The general assembly shall provide for the establishment of special courts, for the trial of misdemeanors, in cities and towns, where the same may be necessary.

Const. 1868.

Oil Co. v. Grocery Co., 169-521; State v. Brown, 159-467; State v. Doster, 157-634; State v. Collins, 151-648; State v. Baskerville, 141-811; State v. Lytle, 138-741; Mott v. Comrs., 126-878; State v. Higgs, 126-1019; State v. Powell, 97-417; Washington v. Hammond, 76-34; State v. Ketchey, 70-622; State v. Pender, 66-318; State v. Walker, 65-462; Edenton v. Wool, 65-381; Wilmington v. Davis, 63-583.

Sec. 15. Clerk of the supreme court. The clerk of the supreme court shall be appointed by the court, and shall hold his office for eight years.

Const. 1868.

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Sec. 16. Election of superior court clerk. A clerk of the superior court for each county shall be elected by the qualified voters thereof, at the time and in the manner prescribed by law for the election of members of the general assembly.

Const. 1868.

Rodwell v. Rowland, 137-620; White v. Murray, 126-157; Clarke v. Carpenter, 81-311; University v. McIver, 72-85.

Sec. 17. Term of office. Clerks of the superior courts shall hold their offices for four years.

Const. 1868.

Rodwell v. Rowland, 137-620.

Sec. 18. Fees, salaries and emoluments. The general assembly shall prescribe and regulate the fees, salaries and emoluments of all officers provided for in this article; but the salaries of the judges shall not be diminished during their continuance in office.

Const. 1868; Convention 1835, art. III, s. 2.

In re taxation of judges' salaries, 131-692; Mott v. Comrs., 126-869; In re Walker, 82-94; Buxton v. Comrs., 82-91; Bunting v. Gales, 77-451; King v. Hunter, 65-603.

Sec. 19. What laws are, and shall be, in force. The laws of North Carolina, not repugnant to this constitution or the constitution and laws of the United States, shall be in force until lawfully altered.

Const. 1868.

State v. Baskerville, 141-811; Mott v. Comrs., 126-878; Ewart v. Jones, 116-577; State v. King, 69-422; State v. Hairston, 63-452; State v. Baker, 63-278; State v. Colbert, 75-368; Boyle v. New Berne, 64-664; State v. Underwood, 63-98; State v. Jarvis, 63-556.

Sec. 20. Disposition of actions at law and suits in equity pending when this constitution shall go into effect, etc. Actions at law and suits in equity pending when this constitution shall go into effect shall be transferred to the courts having jurisdiction thereof, without prejudice by reason of the change; and all such actions and suits commenced before and pending at the adoption by the general assembly of the rules of practice and procedure herein provided for shall be heard and determined according to the practice now in use, unless otherwise provided for by said rules.

Const. 1868.

Lash v. Thomas, 86-316; Patton v. Shipman, 81-349; Sharpe v. Williams, 76-91; Baldwin v. York, 71-466; Green v. Moore, 66-425; Johnson v. Sedberry, 65-1; Foard v. Alexander, 64-71; Teague v. Jones, 63-91; Gaither v. Gibson, 63-93.

Sec. 21. Election, terms of office, etc., of justices of the supreme and judges of the superior courts. The justices of the supreme court shall be elected by the qualified voters of the state, as is provided for the election of members of the general assembly. They shall hold their offices for eight years. The judges of the superior courts, elected at the first election under this amendment, shall be elected in like manner as is provided for justices of the supreme court, and shall hold their offices for eight years. The general assembly may from time

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to time provide by law that the judges of the superior courts, chosen at succeeding elections, instead of being elected by the voters of the whole state, as is herein provided for, shall be elected by the voters of their respective districts.

Const. 1868; Convention 1875.

Rodwell v. Rowland, 137-626; Tate v. Comrs., 122-663; Appendix, 114-927; Hargrove v. Hilliard, 72-169; Cloud v. Wilson, 72-155; University v. McIver, 72-76; Loftin v. Sowers, 65-251.

Sec. 22. Transaction of business in the superior courts. The superior courts shall be, at all times, open for the transaction of all business within their jurisdiction, except the trial of issues of fact requiring a jury.

Const. 1868.

Mott v. Comrs., 126-869; Delafield v. Construction Co., 115-21; Bynum v. Powe, 97-374; Comrs. v. Cook, 86-19; Harrell v. Peebles, 79-26; Hervey v. Edmunds, 68-243; Hunt v. Sneed, 64-180; Green v. Moore, 66-426; McAdoo v. Benbow, 63-463; Foard v. Alexander, 64-69.

Sec. 23. Solicitors for each judicial district. A solicitor shall be elected for each judicial district by the qualified voters thereof, as is prescribed for members of the general assembly, who shall hold office for the term of four years, and prosecute on behalf of the state in all criminal actions in the superior courts, and advise the officers of justice in his district.

Const. 1868.

Rodwell v. Rowland, 137-626; Wilson v. Jordan, 124-690; Tate v. Comrs., 122-663.

Sec. 24. Sheriffs and coroners. In each county a sheriff and coroner shall be elected by the qualified voters thereof, as is prescribed for members of the general assembly, and shall hold their offices for two years. In each township there shall be a constable elected in like manner by the voters thereof, who shall hold his office for two years. When there is no coroner in a county, the clerk of the superior court for the county may appoint one for special cases. In case of a vacancy existing for any cause in any of the offices created by this section, the commissioners of the county may appoint to such office for the unexpired term.

Const. 1868; Const. 1776, s. 38.

Rodwell v. Rowland, 137-620; Rhyne v. Lipscombe, 122-650; State v. Sigman, 106-730; King v. McLure, 84-153; Worley v. Smith, 81-307; Wittkowsky v. Wasson, 69-38.

Sec. 25. Vacancies. All vacancies occurring in the offices provided for by this article of the constitution shall be filled by the appointments of the governor, unless otherwise provided for, and the appointees shall hold their places until the next regular election for members of the general assembly, when elections shall be held to fill such offices. If any person, elected or appointed to any of said offices, shall neglect and fail to qualify, such offices shall be appointed to, held and filled as provided in case of vacancies occurring therein. All incumbents of said offices shall hold until their successors are qualified.

Const. 1868; Convention 1875.

State v. Baskerville, 141-811; Rodwell v. Rowland, 137-620; Ewart v. Jones, 116-570; Appendix, 114-927; State v. Lewis, 107-976; Gilmer v. Holton, 98-26; King v. McLure, 84-153; Worley v. Smith, 81-307; Buchanan v. Comrs., 80-126; Hargrove v. Hilliard, 72-169; Cloud v. Wilson, 72-155; Nichols v. McKee, 68-429.

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Sec. 26. Terms of office of first officers. The officers elected at the first election held under this constitution shall hold their offices for the terms prescribed for them respectively, next ensuing after the next regular election for members of the general assembly. But their terms shall begin upon the approval of this constitution by the congress of the United States.

Const. 1868.

Opinion of Judges, 114-925; Aderholt v. McKee, 65-258; Loftin v. Sowers, 65-254.

Sec. 27. Jurisdiction of justices of the peace. The several justices of the peace shall have jurisdiction, under such regulations as the general assembly shall prescribe, of civil actions founded on contract, wherein the sum demanded shall not exceed two hundred dollars, and wherein the title to real estate shall not be in controversy; and of all criminal matters arising within their counties where the punishment cannot exceed a fine of fifty dollars or imprisonment for thirty days. And the general assembly may give to justices of the peace jurisdiction of other civil actions wherein the value of the property in controversy does not exceed fifty dollars. When an issue of fact shall be joined before a justice, on demand of either party thereto he shall cause a jury of six men to be summoned, who shall try the same. The party against whom the judgment shall be rendered in any civil action may appeal to the superior court from the same. In all cases of a criminal nature, the party against whom the judgment is given may appeal to the superior court, where the matter shall be heard anew. In all cases brought before a justice, he shall make a record of the proceedings, and file the same with the clerk of the superior court for his county.

Const. 1868; Convention 1875.

Jerome v. Setzer, 175-391; Oil Co. v. Grocery Co., 169-521; State v. Doster, 157-634; Wilson v. Ins. Co., 155-173; Riddle v. Milling Co., 150-689; Hauser v. Morrison, 146-248; State v. Bossee, 145-579; Duckworth v. Mull, 143-461; Brown v. Southerland, 142-614; State v. Baskerville, 141-811; State v. Lytle, 138-745; State v. Moore, 136-582; State v. Giles, 134-735, overruling State v. Ostwalt, 118-1209; Knight v. Taylor, 131-85; Cowell v. Gregory, 130-85; State v. Davis, 129-570; Mott v. Comrs., 126-869; State v. White, 125-674; State v. Ray, 122-1098; Rhyne v. Lipscombe, 122-650; Malloy v. Fayetteville, 122-480; State v. Addington, 121-540; McDonald v. Morrow, 119-674; Harkins v. Cathey, 119-665; State v. Nelson, 119-801; State v. Ivie, 118-1230; Alexander v. Gibbon, 118-805; Gambling v. Dickey, 118-986; State v. Wynne, 116-985; Williams v. Bowling, 111-295; Martin v. Goode, 111-289; Slocumb v. Shingle Co., 110-24; State v. Biggers, 108-762; Henderson v. Davis, 106-91; Durham v. Wilson, 104-598; Peck v. Culberson, 104-428; State v. Powell, 97-417, 86-640; Montague v. Mial, 89-137; Allen v. Jackson, 86-321; Morris v. Saunders, 85-140; Katzenstein v. R. R., 84-694; Boing v. R. R., 87-360; Hannah v. R. R., 87-351; Lutz v. Thompson, 87-334; Love v. Rhyne, 86-576; McLane v. Layton, 76-571; McAdoo v. Callum, 86-419; Allen v. Jackson, 86-321; Coggins v. Harrell, 86-317; Brickell v. Bell, 84-85; Fisher v. Webb, 84-44; State v. Dudley, 83-661; State v. Jones, 83-659; Derr v. Stubbs, 83-559; State v. Moore, 82-659; Dalton v. Webster, 82-282; Murphy v. McNeill, 82-221; McDonald v. Cannon, 82-247; State v. Edney, 80-360; Evans v. Williamson, 79-86; State v. Styles, 76-156; Heyer v. Beatty, 76-29; State v. Threadgill, 76-18; Nance v. R. R., 76-9; Pullen v. Green, 75-218; Hinton v. Davis, 75-18; Forsyth v. Bullock, 74-137; Hendrick v. Mayfield, 74-626; State v. Buck, 73-631; State v. Bailey, 73-70; Latham v. Rollins, 72-455; State v. Quick, 72-244; State v. Presly, 72-205; State v. Upchurch, 72-148; State v. Cherry, 72-123; State v. Perry, 71-523; Templeton v. Summers, 71-270; State v. Vermington, 71-263; Bryan v. Rousseau, 71-194; Bullinger v. Marshall, 71-520; Railroad v. Sharpe, 70-510; State v. Heidelberg, 70-496; State v. Yarborough, 70-250; Fell v. Porter, 69-140; Caldwell v. Beatty, 69-364; Davis v. Baker, 67-388; Froelich v. Express Co., 67-1; State v. Pendleton, 65-618; State v. Deaton, 65-497; Edenton v. Wool, 65-379; Hedgecock

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v. Davis, 64-650; State v. Johnson, 64-581; Wilmington v. Davis, 63-584; Winslow v. Weith, 66-432; Dulin v. Howard, 66-433; Froneburger v. Lee, 66-333; State v. Pender, 66-313; Credle v. Gibbs, 65-192; Rives v. Guthrie, 46-84.

See, also, C. S., sections 1473, 1474, 1481.

Sec. 28. Vacancies in office of justices. When the office of justice of the peace shall become vacant otherwise than by expiration of the term, and in case of a failure by the voters of any district to elect, the clerk of the superior court for the county shall appoint to fill the vacancy for the unexpired term.

Const. 1868.

Rodwell v. Rowland, 137-628; Gilmer v. Holton, 98-26; Cloud v. Wilson, 72-155.

Sec. 29. Vacancies in office of superior court clerk. In case the office of clerk of a superior court for a county shall become vacant otherwise than by the expiration of the term, and in case of a failure by the people to elect, the judge of the superior court for the county shall appoint to fill the vacancy until an election can be regularly held.

Const. 1868.

Rodwell v. Rowland, 137-628; White v. Murray, 126-157; Williams v. Bowling, 111-295; Martin v. Goode, 111-289.

Sec. 30. Officers of other courts inferior to supreme court. In case the general assembly shall establish other courts inferior to the supreme court, the presiding officers and clerks thereof shall be elected in such manner as the general assembly may from time to time prescribe, and they shall hold their offices for a term not exceeding eight years.

Convention 1875.

White v. Murray, 126-157; Ewart v. Jones, 116-572; State v. Weddington, 103-364.

Sec. 31. Removal of judges of the various courts for inability. Any judge of the supreme court, or of the superior courts, and the presiding officers of such courts inferior to the supreme court as may be established by law, may be removed from office for mental or physical inability, upon a concurrent resolution of two-thirds of both houses of the general assembly. The judge or presiding officer against whom the general assembly may be about to proceed shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least twenty days before the day on which either house of the general assembly shall act thereon.

Convention 1875. See Convention 1835, art. III, s. 2, cl. 1.

Sec. 32. Removal of clerks of the various courts for inability. Any clerk of the supreme court, or of the superior courts, or of such courts inferior to the supreme court as may be established by law, may be removed from office for mental or physical inability; the clerk of the supreme court by the judges of said court, the clerks of the superior courts by the judge riding the district, and the clerks of such courts inferior to the supreme court as may be established by law, by the presiding officers of said courts. The clerk against whom proceedings are instituted shall receive notice thereof, accompanied by a copy of the causes

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alleged for his removal, at least ten days before the day appointed to act thereon, and the clerk shall be entitled to an appeal to the next term of the superior court, and thence to the supreme court, as provided in other cases of appeals.

Convention 1875.

Sec. 33. Amendments not to vacate existing offices. The amendments made to the constitution of North Carolina by this convention shall not have the effect to vacate any office or term of office now existing under the constitution of the state, and filled, or held, by virtue of any election or appointment under the said constitution, and the laws of the state made in pursuance thereof.

Convention 1875.

State v. Moore, 136-581; Appendix, 114-928.

ARTICLE V

REVENUE AND TAXATION

Section 1. Capitation tax; exemptions. The general assembly shall levy a capitation tax on every male inhabitant of the state over twenty-one and under fifty years of age, which shall be equal on each to the tax on property valued at three hundred dollars in cash. The commissioners of the several counties may exempt from capitation tax in special cases, on account of poverty and infirmity, and the state and county capitation tax combined shall never exceed two dollars on the head.

Const. 1868.

Davis v. Lenoir, 178-668; R. R. v. Comrs., 178-449; Guire v. Comrs., 177-516; Parvin v. Comrs., 177-508; Wagstaff v. Central Highway Com., 177-354; R. R. v. Cherokee County, 177-86; Hill v. Lenoir County, 176-572; Bennett v. Comrs., 173-625; Ingram v. Johnson, 172-676; Moore v. Comrs., 172-419; Hargrave v. Comrs., 168-627; Kitchin v. Wood, 154-565; Bd. of Education v. Comrs., 150-116; Perry v. Comrs., 148-521; R. R. v. Comrs., 148-248; R. R. v. Comrs., 148-220; Collie v. Comrs., 145-172; State v. Wheeler, 141-774; Pace v. Raleigh, 140-67; Bd. of Ed. v. Comrs., 137-313; Wingate v. Parker, 136-369; State v. Ballard, 122-1026; Comrs. v. Snugg, 121-409; Russell v. Ayer, 120-180; Williams v. Comrs., 119-520; Bd. of Ed. v. Comrs., 111-578, 107-112; Jones v. Comrs., 107-248; Redmond v. Comrs., 106-137; Parker v. Comrs., 104-168; Barksdale v. Comrs., 93-472; Cromartie v. Comrs., 87-139, 85-217; Clifton v. Wynne, 80-145; French v. Wilmington, 75-477; Griffin v. Comrs., 74-701; French v. Comrs., 74-692; Brown v. Comrs., 72-388; Mauney v. Comrs., 71-486; Brothers v. Comrs., 70-726; Street v. Comrs., 70-644; Johnson v. Comrs., 67-101; Sedberry v. Comrs., 66-486; University v. Holden, 63-410; R. R. v. Holden, 63-400; Gardner v. Hall, 61-21.

Sec. 2. Application of proceeds of state and county capitation tax. The proceeds of the state and county capitation tax shall be applied to the purposes of education and the support of the poor, but in no one year shall more than twenty-five per cent thereof be appropriated to the latter purpose.

Const. 1868.

Wagstaff v. Central Highway Com., 177-354; Hill v. Lenoir County, 176-572; Moose v. Comrs., 172-419; Board of Ed. v. Comrs., 150-116; Perry v. Comrs., 148-521; R. R. v. Comrs., 148-248; Collie v. Comrs., 145-170; State v. Wheeler, 141-774; Crocker v. Moore, 140-432; Bd. of Ed. v. Comrs., 137-311; School Directors v. Comrs., 127-263; Bd. of Ed. v. Comrs., 113-379; Redmond v. Comrs., 106-137; Parker v. Comrs., 104-168; Durham v. Bostick, 72-353; Jacobs v. Smallwood, 63-112.

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Sec. 3. Taxation shall be by uniform rule and ad valorem; exemptions. Laws shall be passed taxing, by a uniform rule, all moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise; and, also, all real and personal property, according to its true value in money: Provided, notes, mortgages, and all other evidence of indebtedness given in good faith for the purchase price of a home, when said purchase price does not exceed three thousand dollars, and said notes, mortgages, and other evidence of indebtedness shall be made to run for not less than five nor more than twenty years, shall be exempt from taxation of every kind: Provided, that the interest carried by such notes and mortgages shall not exceed five and one-half per cent. The general assembly may also tax trades, professions, franchises, and incomes: Provided, that no income shall be taxed when the property from which the income is derived is taxed.

Const. 1868; 1917, c. 119, adding provisos 1 and 2, making limited exception for purchase price of homes.

Motor Corp. v. Flynt, 178-399; Bickett v. Tax Com., 177-433; Smith v. Wilkins, 164-135; State v. Bullock, 161-223; Comrs. v. Webb, 160-594; Dalton v. Brown, 159-175; State v. Williams, 158-610; Guano Co. v. Biddle, 158-212; Pullen v. Corp. Com., 152-548; Wolfenden v. Comrs., 152-83; State v. Danenburg, 151-718; Land Co. v. Smith, 151-70; R. R. v. New Bern, 147-165; Lumber Co. v. Smith, 146-198; Collie v. Comrs., 145-170; State v. Wheeler, 141-773; In re Morris Estate, 138-259; State v. Roberson, 136-587; Plymouth v. Cooper, 135-1; Lacy v. Packing Co., 134-567; Jackson v. Comrs., 130-387; State v. Hunt, 129-636; State v. Carter, 129-560; State v. Irvin, 126-989; State v. Sharp, 125-631; Collins v. Pettitt, 124-727; State v. Ballard, 122-1026; Cobb v. Comrs., 122-307; Hilliard v. Asheville, 118-845; Schaul v. Charlotte, 118-733; Rosenbaum v. Newbern, 118-83; State v. Worth, 116-1007; Loan Assn. v. Comrs., 115-410; State v. Moore, 113-697; State v. Georgia Co., 112-34; Wiley v. Comrs., 111-400; Raleigh v. Peace, 110-38; State v. Wessel, 109-735; State v. Stevenson, 109-733; State v. French, 109-722; Jones v. Comrs., 107-257; Redmond v. Comrs., 106-137; Puitt v. Comrs., 94-709; Holton v. Comrs., 93-430; Busbee v. Comrs., 93-143; Wilmington v. Macks, 86-91; Busbee v. Comrs., 93-143; Railroad v. Comrs., 91-454; Jones v. Arrington, 91-125; Cain v. Comrs., 86-8; Railroad v. Comrs., 84-504; Worth v. Comrs., 82-420; Worth v. Railroad, 89-301; Evans v. Comrs., 89-154; Belo v. Comrs., 82-415; Mowery v. Salisbury, 82-175; Hewlett v. Nutt, 79-263; Gatlin v. Tarboro, 78-119; Young v. Henderson, 76-420; Railroad v. Comrs., 75-477; French v. Wilmington, 75-477; Kyle v. Comrs., 75-445; Wilson v. Charlotte, 74-748; Rwy. Co. v. Wilmington, 72-73; R. R. v. Comrs., 72-10; Ruffin v. Comrs., 69-498; Lilly v. Comrs., 69-300; Pullen v. Comrs., 68-451; University v. Holden, 63-410.

Sec. 4. Restrictions upon the increase of the public debt except in certain contingencies. Until the bonds of the state shall be at par, the general assembly shall have no power to contract any new debt or pecuniary obligation in behalf of the state, except to supply a casual deficit, or for suppressing invasion or insurrection, unless it shall in the same bill levy a special tax to pay the interest annually. And the general assembly shall have no power to give or lend the credit of the state in aid of any person, association, or corporation, except to aid in the completion of such railroads as may be unfinished at the time of the adoption of this constitution, or in which the state has a direct pecuniary interest, unless the subject be submitted to a direct vote of the people of the state, and be approved by a majority of those who shall vote thereon.

Const. 1868.

Comrs. v. State Treasurer, 174-141; Moran v. Comrs., 168-289; Comrs. v. Snuggs, 121-402; Mauney v. Comrs., 71-486; R. R. v. Jenkins, 65-173; University v. Holden, 63-410; Galloway v. R. R., 65-147.

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Sec. 5. Property exempt from taxation. Property belonging to the state or to municipal corporations shall be exempt from taxation. The general assembly may exempt cemeteries, and property held for educational, scientific, literary, charitable, or religious purposes; also wearing apparel, arms for muster, household and kitchen furniture, the mechanical and agricultural implements of mechanics and farmers; libraries and scientific instruments, or any other personal property, to a value not exceeding three hundred dollars.

Const. 1868; 1872-3, c. 83.

Wagstaff v. Central Highway Com., 177-354; Leary v. Comrs., 172-25; Southern Assembly v. Palmer, 166-75; Davis v. Salisbury, 161-56; Comrs. v. Webb, 160-594; Corp. Com. v. Construction Co., 160-582; Bd. of Ed. v. Comrs., 137-314; United Brethren v. Comrs., 115-489; Loan Assn. v. Comrs., 115-410; State v. Stevenson, 109-730; R. R. v. Comrs., 75-474, 84-504.

Sec. 6. Taxes levied for counties. The taxes levied by the commissioners of the several counties for county purposes shall be levied in like manner with the state taxes, and shall never exceed the double of the state tax, except for a special purpose, and with the special approval of the general assembly.

Const. 1868.

R. R. v. Comrs., 178-449; Comrs. v. Trust Co., 178-170; Martin County v. Trust Co., 178-26; Parvin v. Comrs., 177-508; Wagstaff v. Highway Com., 177-354; R. R. v. Cherokee County, 177-86; Hill v. Lenoir County, 176-572; Moose v. Comrs., 172-419; Pritchard v. Comrs., 160-476; Board of Ed. v. Comrs., 150-116; Perry v. Comrs., 148-521; R. R. v. Comrs., 148-248; Comrs. v. McDonald, 148-125; Collie v. Comrs., 145-181; Jones v. Comrs., 143-59; Bd. of Ed. v. Comrs., 137-311; Jones v. Comrs., 137-608; Jones v. Comrs., 135-224; State v. Sharp, 125-631; Smathers v. Comrs., 125-485; Comrs. v. Payne, 123-488; Tate v. Comrs., 122-812; Herring v. Pugh, 122-423; Williams v. Comrs., 119-520; Loan Assn. v. Comrs., 115-410; Bd. of Ed. v. Comrs., 111-578; State v. Stevenson, 109-730; Jones v. Comrs., 107-248; Redmond v. Comrs., 106-130; Parker v. Comrs., 104-168; Mace v. Comrs., 99-65; Barksdale v. Comrs., 93-472; Cromartie v. Comrs., 87-139, 85-217; Cain v. Comrs., 86-8; Clifton v. Wynne, 80-145; Young v. Henderson, 76-420; Satterthwaite v. Comrs., 76-153; French v. Wilmington, 75-477; Kyle v. Comrs., 75-445; Wilson v. Charlotte, 74-748; Griffin v. Comrs., 74-701; French v. Comrs., 74-692; R. R. v. Comrs., 74-506; 72-486; Trull v. Comrs., 72-388; Mauney v. Comrs., 71-486; Street v. Comrs., 70-644; Haughton v. Comrs., 70-466; Pullen v. Comrs., 68-451; Johnston v. Comrs., 67-101; Simmons v. Wilson, 66-336; Pegram v. Comrs., 64-557; Brodnax v. Groom, 64-244; University v. Holden, 63-410.

Sec. 7. Acts levying taxes shall state object, etc. Every act of the general assembly levying a tax shall state the special object to which it is to be applied, and it shall be applied to no other purpose.

Const. 1868.

Parker v. Comrs., 178-92; Bd. of Ed. v. Comrs., 137-311; McCless v. Meekins, 117-34; Parker v. Comrs., 104-170; Clifton v. Wynne, 80-145; R. R. v. Holden, 63-410.

ARTICLE VI

SUFFRAGE AND ELIGIBILITY TO OFFICE

Section 1. Who may vote. Every male person born in the United States, and every male person who has been naturalized, twenty-one years of age, and possessing the qualifications set out in this article, shall be entitled to vote at any election by the people in the state, except as herein otherwise provided.

1899, c. 218; 1900, c. 2.

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Woodall v. Highway Com., 176-377; Ingram v. Johnson, 172-676; State v. Knight, 169-333; Gill v. Comrs., 160-176; Pace v. Raleigh, 140-68; Clarke v. Statesville, 139-492; Quinn v. Lattimore, 120-428; In re Reid, 119-641; Harris v. Scarborough, 110-232; Hannon v. Grizzard, 89-115; State v. Jones, 82-685; Lee v. Dunn, 73-595; Van Bokkelen v. Canady, 73-198; Railroad v. Comrs., 72-486; University v. McIver, 72-76; Perry v. Whitaker, 71-475; Jacobs v. Smallwood, 63-112; Roberts v. Cannon, 20-256.

Sec. 2. Qualifications of voters. He shall have resided in the state of North Carolina for two years, in the county six months, and in the precinct, ward or other election district, in which he offers to vote, four months next preceding the election: Provided, that removal from one precinct, ward or other election district to another in the same county shall not operate to deprive any person of the right to vote in the precinct, ward or other election district from which he has removed until four months after such removal. No person who has been convicted, or who has confessed his guilt in open court upon indictment, of any crime the punishment of which now is, or may hereafter be, imprisonment in the state's prison, shall be permitted to vote, unless the said person shall be first restored to citizenship in the manner prescribed by law.

Convention 1875; 1899, c. 218; 1900, c. 2, s. 2.

State v. Windley, 178-670; Woodall v. Highway Com., 176-377; State v. Smith, 174-804; Watson v. R. R., 152-215; Cox v. Comrs., 146-584; Harris v. Scarborough, 110-232; Pace v. Raleigh, 140-68; Clarke v. Statesville, 139-492; Quinn v. Lattimore, 120-428; DeBerry v. Nicholson, 102-465; Van Bokkelen v. Canady, 73-198; Railroad v. Comrs., 72-486; Perry v. Whitaker, 71-475.

See, also, C. S., secs. 5936, 5937.

Sec. 3. Voter to be registered. Every person offering to vote shall be at the time a legally registered voter as herein prescribed, and in the manner hereafter provided by law, and the general assembly of North Carolina shall enact general registration laws to carry into effect the provisions of this article.

1899, c. 218; 1900, c. 2, s. 3.

Cox v. Comrs., 146-584; Pace v. Raleigh, 140-68; Harris v. Scarborough, 110-232.

Sec. 4. Qualification for registration; must have paid poll tax. Every person presenting himself for registration shall be able to read and write any section of the constitution in the English language; and before he shall be entitled to vote he shall have paid, on or before the first day of May of the year in which he proposes to vote, his poll tax for the previous year, as prescribed by article V, section 1, of the constitution. But no male person who was, on January 1, 1867, or at any time prior thereto, entitled to vote under the laws of any state in the United States wherein he then resided, and no lineal descendant of any such person, shall be denied the right to register and vote at any election in this state by reason of his failure to possess the educational qualifications herein prescribed: Provided, he shall have registered in accordance with the terms of this section prior to December 1, 1908. The general assembly shall provide for the registration of all persons entitled to vote without the educational qualifications herein prescribed, and shall, on or before November 1, 1908, provide for the making of a permanent record of such registration, and all persons so registered shall forever thereafter have the

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right to vote in all elections by the people in this state, unless disqualified under section 2 of this article: Provided, such person shall have paid his poll tax as above required.

Const. 1868; 1899, c. 218; 1900, c. 2, s. 4.

Ingram v. Johnson, 172-676; Moose v. Comrs., 172-419; State v. Knight, 169-333; Perry v. Comrs., 148-521; Cox v. Comrs., 146-584; Collie v. Comrs., 145-175; Pace v. Raleigh, 140-68; Clark v. Statesville, 139-492; Harris v. Scarborough, 110-232; Hannon v. Grizard, 89-115.

Sec. 5. Indivisible plan; legislative intent. That this amendment to the constitution is presented and adopted as one indivisible plan for the regulation of the suffrage, with the intent and purpose to so connect the different parts, and to make them so dependent upon each other, that the whole shall stand or fall together.

1900, c. 2, s. 5.

Sec. 6. Elections by people and general assembly. All elections by the people shall be by ballot, and all elections by the general assembly shall be viva voce.

Const. 1868; 1899, c. 218.

Sec. 7. Eligibility to office; official oath. Every voter in North Carolina, except as in this article disqualified, shall be eligible to office, but before entering upon the duties of the office, he shall take and subscribe the following oath:

“I, _____, do solemnly swear (or affirm) that I will support and maintain the constitution and laws of the United States, and the constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office, as _____ So help me, God.”

1899, c. 218; 1900, c. 2, s. 7.

Cole v. Sanders, 174-112; State v. Knight, 169-333; State v. Bateman, 162-588.

Sec. 8. Disqualification for office. The following classes of persons shall be disqualified for office: First, all persons who shall deny the being of Almighty God. Second, all persons who shall have been convicted, or confessed their guilt on indictment pending, and whether sentenced or not, or under judgment suspended, of any treason or felony, or of any other crime for which the punishment may be imprisonment in the penitentiary, since becoming citizens of the United States, or of corruption or malpractice in office, unless such person shall be restored to the rights of citizenship in a manner prescribed by law.

1899, c. 218; 1900, c. 2, s. 8.

State v. Windley, 178-670; Bank v. Redwine, 171-559; State v. Knight, 169-333.

Sec. 9. When this chapter operative. That this amendment to the constitution shall go into effect on the first day of July, nineteen hundred and two, if a majority of votes cast at the next general election shall be cast in favor of this suffrage amendment.

1899, c. 218; 1900, c. 2, s. 9.

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ARTICLE VII

MUNICIPAL CORPORATIONS

Section 1. County officers. In each county there shall be elected biennially by the qualified voters thereof, as provided for the election of members of the general assembly, the following officers: A treasurer, register of deeds, surveyor and five commissioners.

Const. 1868.

Rhodes v. Lewis, 80-136; Van Bokkelen v. Canady, 73-198; Aderholt v. McKee, 65-257.

Sec. 2. Duty of county commissioners. It shall be the duty of the commissioners to exercise a general supervision and control of the penal and charitable institutions, schools, roads, bridges, levying of taxes and finances of the county, as may be prescribed by law. The register of deeds shall be, ex officio, clerk of the board of commissioners.

Const. 1868.

Holmes v. Bullock, 178-376; Wilson v. Holding, 170-352; Comrs. v. Comrs., 165-632; Bunch v. Comrs., 159-335; Southern Audit Co. v. McKensie, 147-461; Crocker v. Moore, 140-433; In re Spease Ferry, 138-219; Barrington v. Ferry Co., 69-165; Canal Co. v. McAllister, 74-163; Lane v. Stanley, 65-156; R. R. v. Holden, 63-434.

See, also, C. S., secs. 1297, 1299, 1300.

Sec. 3. Counties to be divided into districts. It shall be the duty of the commissioners first elected in each county to divide the same into convenient districts, to determine the boundaries and prescribe the name of the said districts, and to report the same to the general assembly before the first day of January, 1869.

Const. 1868.

Road Com. v. Comrs., 178-61; Motor Co. v. Flynt, 178-399; Wittkowsky v. Comrs., 150-90; Wallace v. Trustees, 84-164; Gamble v. McCrady, 75-509; McNeill v. Green, 75-329; Tucker v. Raleigh, 75-267; Wilson v. Charlotte, 74-748; Canal Co. v. McAllister, 74-159; Grady v. Comrs., 74-101; Wade v. Comrs., 74-81; Eladen Co. v. Clarke, 73-255; Mitchell v. Trustees, 71-400; Barrington v. Ferry Co., 69-165; University v. Holden, 63-410; Gooch v. Gregory, 65-142; Lane v. Stanley, 65-153.

Sec. 4. Townships have corporate powers. Upon the approval of the reports provided for in the foregoing section by the general assembly, the said districts shall have corporate powers for the necessary purposes of local government, and shall be known as townships.

Const. 1868.

Road Com. v. Comrs., 178-61; Motor Co. v. Flynt, 178-399; Mann v. Allen, 171-219; Jones v. New Bern, 152-64; Wittkowsky v. Comrs., 150-90; Crocker v. Moore, 140-429; Cotton Mills v. Waxhaw, 130-295; Brown v. Comrs., 100-92; Wallace v. Trustees, 84-164; Mitchell v. Trustees, 71-400; Payne v. Caldwell, 65-488; Lane v. Stanley, 65-153.

Sec. 5. Officers of townships. In each township there shall be biennially elected, by the qualified voters thereof, a clerk and two justices of the peace, who shall constitute a board of trustees, and shall, under the supervision of the

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county commissioners, have control of the taxes and finances, roads and bridges of the townships, as may be prescribed by law. The general assembly may provide for the election of a larger number of justices of the peace in cities and towns, and in those townships in which cities and towns are situated. In every township there shall also be biennially elected a school committee, consisting of three persons, whose duty shall be prescribed by law.

Const. 1868.

Road Com. v. Comrs., 178-61; Wallace v. Trustees, 84-164; Simpson v. Comrs., 84-158; Mitchell v. Trustees, 71-400; Haughton v. Comrs., 70-466; Edenton v. Wool, 65-379; Conoley v. Harris, 64-662; Wilmington v. Davis, 63-582.

Sec. 6. Trustees shall assess property. The township board of trustees shall assess the taxable property of their townships and make return to the county commissioners for revision, as may be prescribed by law. The clerk shall be, ex officio, treasurer of the township.

Const. 1868.

R. R. v. Comrs., 178-449; Road Com. v. Comrs., 178-62; Guire v. Comrs., 177-516; Parvin v. Comrs., 177-508; Jones v. Comrs., 107-261; R. R. v. Comrs., 84-508; Railroad v. Comrs., 82-261; Cobb v. Elizabeth City, 75-1; Railroad v. Comrs., 72-12.

Sec. 7. No debt or loan except by a majority of voters. No county, city, town or other municipal corporation shall contract any debt, pledge its faith or loan its credit, nor shall any tax be levied or collected by any officers of the same except for the necessary expenses thereof, unless by a vote of the majority of the qualified voters therein.

Const. 1868.

Davis v. Lenoir County, 178-668; Guire v. Comrs., 177-516; Parvin v. Comrs., 177-516; Hill v. Lenoir, 176-572; Williams v. Comrs., 176-554; Woodall v. Highway Com., 176-377; Comrs. v. Boring, 175-105; Comrs. v. State Treasurer, 174-141; Comrs. v. Spitzer, 173-147; Cottrell v. Lenoir, 173-138; Archer v. Joyner, 173-75; Swindell v. Belhaven, 173-1; Stephens v. Charlotte, 172-564; Moose v. Comrs., 172-419; Keith v. Lockhart, 171-451; Kinston v. Trust Co., 169-207; Hargrave v. Comrs., 168-626; Moran v. Comrs., 168-289; Comrs. v. Comrs., 165-632; Sprague v. Comrs., 165-603; Withers v. Comrs., 163-341; Pritchard v. Comrs., 160-476; Russell v. Troy, 159-366; Winston v. Bank, 158-512; Tripp v. Comrs., 158-180; Ellis v. Trustees, 156-10; Board of Trustees v. Webb, 155-379; Sanderlin v. Luken, 152-738; Highway Com. v. Webb, 152-710; Underwood v. Asheboro, 152-641; Ellison v. Williamston, 152-147; Burgin v. Smith, 151-561; Hightower v. Raleigh, 150-569; Smith v. Belhaven, 150-156; Wittkowsky v. Comrs., 150-90; Hendersonville v. Jordan, 150-35; Wharton v. Greensboro, 149-62; Perry v. Comrs., 148-521; Hollowell v. Borden, 148-255; R. R. v. Comrs., 148-248; R. R. v. Comrs., 148-220; Comrs. v. McDonald, 148-125; Comrs. v. Webb, 148-120; McLeod v. Comrs., 148-77; Swinson v. Mount Olive, 147-611; Wharton v. Greensboro, 146-356; Collie v. Comrs., 145-178; Crocker v. Moore, 140-432; Greensboro v. Scott, 138-184; Smith v. Trustees, 141-151; Jones v. Comrs., 137-579; Wingate v. Parker, 136-369; Faucett v. Mt. Airy, 134-1; Cotton Mills v. Waxhaw, 130-293; Black v. Comrs., 129-122; Broadfoot v. Fayetteville, 128-529; State v. Irvin, 126-992; Garsed v. Greensboro, 126-161; Edgerton v. Water Co., 126-93; Smathers v. Comrs., 125-488; Slocomb v. Fayetteville, 125-362; Bear v. Comrs., 124-204; Comrs. v. Payne, 123-432; Tate v. Comrs., 122-812; Charlotte v. Shepard, 122-602; Herring v. Dixon, 122-420; Rodman v. Washington, 122-39; Thrift v. Elizabeth City, 122-31; Mayo v. Comrs., 122-5; Comrs. v. Snugg, 121-403; Charlotte v. Shepard, 120-411; Williams v. Comrs., 119-520; Vaughn v. Comrs., 117-435; McCless v. Meekins, 117-34; R. R. v. Comrs., 116-563; Bank v. Comrs., 116-339; Bd. of Ed. v. Comrs., 113-379; Graded School v. Broadhurst, 109-228; R. R. v. Comrs., 109-159; Jones v. Comrs., 107-248; Parker v. Comrs., 104-168; Brown v. Comrs., 100-92; Rigsbee v. Durham, 99-341, 98-81; Gardner v. New Berne, 98-228; Wood

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v. Oxford, 97-227; McDowell v. Construction Co., 96-514; Markham v. Manning, 96-133; Duke v. Brown, 96-127; Southerland v. Goldsboro, 96-49; Halcombe v. Comrs., 89-346; Evans v. Comrs., 89-154; Shuford v. Comrs., 86-553; Norment v. Charlotte, 85-387; Simpson v. Comrs., 84-158; Gatlin v. Tarboro, 78-119; Young v. Henderson, 76-420; French v. Wilmington, 75-477; Kyle v. Comrs., 75-445; Tucker v. Raleigh, 75-267; Wilson v. Charlotte, 74-748; French v. Comrs., 74-692; Van Bokkelen v. Canady, 73-198; R. R. v. Comrs., 72-486; Trull v. Comrs., 72-388; Weinstein v. Comrs., 71-525; Reiger v. Comrs., 70-319; Payne v. Caldwell, 65-488; Lane v. Stanly, 65-153; Brodnax v. Groom, 64-244; Winslow v. Comrs., 64-218; University v. Holden, 63-410.

See, also, C. S., sections 1297, 2691.

Sec. 8. No money drawn except by law. No money shall be drawn from any county or township treasury, except by authority of law.

Const. 1868.

Faison v. Comrs., 171-411; Grady v. Comrs., 74-101.

Sec. 9. Taxes to be ad valorem. All taxes levied by any county, city, town or township shall be uniform and ad valorem upon all property in the same, except property exempted by this constitution.

Const. 1868.

Marshburn v. Jones, 176-516; Keith v. Lockhart, 171-451; Board of Trustees v. Webb, 155-379; Comrs. v. Webb, 160-594; Perry v. Comrs., 148-521; McLeod v. Comrs., 148-77; Smith v. Trustees, 141-151; Jones v. Comrs., 137-600; Wingate v. Parker, 136-369; Harper v. Comrs., 133-106; Winston v. Salem, 131-404; Ins. Co. v. Stedman, 130-223; State v. Irvin, 126-993; Hilliard v. Asheville, 118-845; Loan Assn. v. Comrs., 115-410; Wiley v. Comrs., 111-397; Raleigh v. Peace, 110-32; Redmond v. Comrs., 106-122; Jones v. Comrs., 106-122; Moore v. Comrs., 80-154; Young v. Henderson, 76-420; Cain v. Comrs., 86-15; Kyle v. Comrs., 75-447; Cobb v. Elizabeth City, 75-7; Wilson v. Charlotte, 74-754; Rwy. Co. v. Wilmington, 72-73; Grady v. Comrs., 74-101; Weinstein v. Comrs., 71-535; Pullen v. Raleigh, 68-451.

See, also, C. S., sec. 2678.

Sec. 10. When officers enter on duty. The county officers first elected under the provisions of this article shall enter upon their duties ten days after the approval of this constitution by the congress of the United States.

Const. 1868.

Sec. 11. Governor to appoint justices. The governor shall appoint a sufficient number of justices of the peace in each county, who shall hold their places until sections four, five and six of this article shall have been carried into effect.

Const. 1868.

Nichols v. McKee, 68-429.

See, also, C. S., sections 1462-1472.

Sec. 12. Charters to remain in force until legally changed. All charters, ordinances and provisions relating to municipal corporations shall remain in force until legally changed, unless inconsistent with the provisions of this constitution.

Const. 1868.

Ward v. Elizabeth City, 121-1; Dare Co. v. Currituck Co., 95-189.

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Sec. 13. Debts in aid of the rebellion not to be paid. No county, city, town or other municipal corporation shall assume to pay, nor shall any tax be levied or collected for the payment of, any debt, or the interest upon any debt, contracted directly or indirectly in aid or support of the rebellion.

Const. 1868.

Board of Trustees v. Webb, 155-379; R. R. v. Comrs., 148-220; Smith v. School Trustees, 141-157; Jones v. Comrs., 137-600; Wingate v. Parker, 136-369; Brickell v. Comrs., 81-242; Weith v. Wilmington, 68-24; Poindexter v. Davis, 67-112; Davis v. Poindexter, 72-441; Lance v. Hunter, 72-178; Logan v. Plummer, 70-388; Rand v. State, 65-194; Setzer v. Comrs., 64-516; Winslow v. Comrs., 64-218; Leak v. Comrs., 64-132.

Sec. 14. Powers of general assembly over municipal corporations. The general assembly shall have full power by statute to modify, change, or abrogate any and all of the provisions of this article, and substitute others in their place, except sections seven, nine and thirteen.

Convention 1875.

Motor Co. v. Flynt, 178-399; Road Com. v. Comrs., 178-61; Cole v. Sanders, 174-112; Mann v. Allen, 171-219; Comrs. v. Comrs., 165-632; Bunch v. Comrs., 159-335; Board of Trustees v. Webb, 155-379; Southern Audit Co. v. McKensie, 147-461; Smith v. School Trustees, 141-157; Crocker v. Moore, 140-433; Jones v. Comrs., 137-600; Wingate v. Parker, 136-369; In re Spease Ferry, 138-220; Gattis v. Griffin, 125-334; Harris v. Wright, 121-172; Bd. of Ed. v. Comrs., 111-578; Sneed v. Bullock, 80-132; Jones v. Jones, 80-127.

ARTICLE VIII

CORPORATIONS OTHER THAN MUNICIPAL

Section 1. Corporations under general laws. No corporation shall be created nor shall its charter be extended, altered, or amended by special act, except corporations for charitable, educational, penal, or reformatory purposes that are to be and remain under the patronage and control of the state; but the general assembly shall provide by general laws for the chartering and organization of all corporations and for amending, extending, and forfeiture of all charters, except those above permitted by special act. All such general laws and special acts may be altered from time to time or repealed; and the general assembly may at any time by special act repeal the charter of any corporation.

1915, c. 99. In effect Jan. 10, 1917; see Reade v. Durham, 173-668; Mills v. Comrs., 175-215; Woodall v. Highway Com., 176-377.

Mills v. Comrs., 175-215; Board of Education v. Comrs., 174-47; Stagg v. Land Co., 171-583; Mann v. Allen, 171-219; R. R. v. Oates, 164-167; Reid v. R. R., 162-355; Power Co. v. Whitney Co., 150-31; State v. Cantwell, 142-614; Coleman v. R. R., 138-354; Debnam v. Teleph. Co., 126-843; Gattis v. Griffin, 125-334; Railroad v. Dortch, 124-673; Griffin v. Water Co., 122-210; Ward v. Elizabeth City, 121-1; Wilson v. Leary, 120-92; Winslow v. Morton, 118-486; Hanstein v. Johnson, 112-253; R. R. v. Comrs., 108-60; McGowan v. Railroad, 95-417; R. R. v. Rollins, 82-523; State v. Jones, 67-210; Clark v. Stanley, 66-59; R. R. v. Reid, 64-226; R. R. v. Reid, 64-155; State v. Matthews, 56-451; State v. Petway, 55-396.

Sec. 2. Debts of corporations, how secured. Dues from corporations shall be secured by such individual liabilities of the corporations, and other means, as may be prescribed by law.

Const. 1868.

Reade v. Durham, 173-668; Van Bokkelen v. Canady, 73-198.

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Sec. 3. What corporations shall include. The term "corporation," as used in this article, shall be construed to include all associations and joint-stock companies having any of the powers and privileges of corporations not possessed by individuals or partnerships. And all corporations shall have the right to sue, and shall be subject to be sued, in all courts, in like cases as natural persons.

Const. 1868.

Barker v. R. R., 137-223; Hanstein v. Johnson, 112-253.

Sec. 4. Legislature to provide for organizing cities, towns, etc. It shall be the duty of the legislature to provide by general laws for the organization of cities, towns, and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessment and in contracting debts by such municipal corporations.

Const. 1868; 1915, c. 99, which added "by general laws" after "to provide" and before "for the organization," and changed "assessments" to "assessment" after "abuses in" and before "and." In effect Jan. 10, 1917, see under sec. 1 of this article.

Taylor v. Greensboro, 175-423; Mills v. Comrs., 175-215; Reade v. Durham, 173-668; Bramham v. Durham, 171-196; Winston v. Bank, 158-512; Murphy v. Webb, 156-402; Ellison v. Williams, 152-147; Bradshaw v. High Point, 151-517; Perry v. Comrs., 148-521; Cox v. Comrs., 146-584; Wingate v. Parker, 136-369; Robinson v. Goldsboro, 135-382; Brockenbrough v. Comrs., 134-17; Wadsworth v. Concord, 133-587; State v. Green, 126-1032; Cotton Mills v. Waxhaw, 130-293; State v. Irvin, 126-993; Hutton v. Webb, 124-749; Rosenbaum v. Newbern, 118-84; Railway v. Railway, 114-725; Raleigh v. Peace, 110-32; Jones v. Comrs., 107-263; Gatlin v. Tarboro, 78-119; French v. Wilmington, 75-477; Tucker v. Raleigh, 75-267; Wilson v. Charlotte, 74-748; Van Bokkelen v. Canady, 73-198; Pullen v. Raleigh, 68-451; Dellinger v. Tween, 66-206.

ARTICLE IX

EDUCATION

Section 1. Education shall be encouraged. Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.

Const. 1868; Const. 1776, sec. 41.

Bd. of Ed. v. Comrs., 178-305; Bd of Ed. v. Comrs., 174-469; Comrs. v. Bd. of Ed., 163-404; Corp. Com. v. Construction Co., 160-582; Collie v. Comrs., 145-170; Green v. Owen, 125-223; Bd. of Ed. v. Comrs., 111-582; Lane v. Stanley, 65-153; Barksdale v. Comrs., 93-472.

Sec. 2. General assembly shall provide for schools; separation of the races. The general assembly, at its first session under this constitution, shall provide by taxation and otherwise for a general and uniform system of public schools, wherein tuition shall be free of charge to all the children of the state between the ages of six and twenty-one years. And the children of the white race and the children of the colored race shall be taught in separate public schools; but there shall be no discrimination in favor of, or to the prejudice of, either race.

Const. 1868; Convention 1875.

Bd. of Ed. v. Comrs., 178-305; Bd. of Ed. v. Comrs., 174-469; Moose v. Comrs., 172-419; School Comrs. v. Bd. of Ed., 169-196; Johnson v. Bd. of Ed., 166-468; Comrs. v. Bd. of Ed.,

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163-404; Williams v. Bradford, 158-36; Bonitz v. School Trustees, 154-375; State v. Wolf, 145-440; Collie v. Comrs., 145-178; Lowery v. School Trustees, 140-39; Bd. of Ed. v. Comrs., 137-314; Hooker v. Greenville, 130-474; Bear v. Comrs., 124-213; Bd. of Ed. v. State Board, 114-313; Bd. of Ed. v. Comrs., 111-578; Markham v. Manning, 96-132; Puitt v. Comrs., 94-709; Riggsbee v. Durham, 94-800; R. R. v. Holden, 63-436.

Sec. 3. Counties to be divided into districts. Each county of the state shall be divided into a convenient number of districts, in which one or more public schools shall be maintained at least six months in every year; and if the commissioners of any county shall fail to comply with the aforesaid requirements of this section, they shall be liable to indictment.

Const. 1868; 1917, c. 192, inserting "six months" for "four months" for annual school term.

Bd. of Ed. v. Comrs., 178-305; Hill v. Lenoir County, 176-572; Bd. of Ed. v. Comrs., 174-469; Bennett v. Comrs., 173-625; Bd. of Ed. v. Comrs., 150-116; R. R. v. Comrs., 148-220; Collie v. Comrs., 145-172; Bd. of Ed. v. Comrs., 111-578, 113-379; Barksdale v. Comrs., 93-472.

Sec. 4. What property devoted to educational purposes. The proceeds of all lands that have been or hereafter may be granted by the United States to this state, and not otherwise appropriated by this state or the United States; also all moneys, stocks, bonds, and other property now belonging to any state fund for purposes of education; also the net proceeds of all sales of the swamp lands belonging to the state, and all other grants, gifts or devises that have been or hereafter may be made to the state, and not otherwise appropriated by the state, or by the terms of the grant, gift or devise, shall be paid into the state treasury, and, together with so much of the ordinary revenue of the state as may be by law set apart for that purpose, shall be faithfully appropriated for establishing and maintaining in this state a system of free public schools, and for no other uses or purposes whatsoever.

Const. 1868; Convention 1875.

Collie v. Comrs., 145-186; Bear v. Comrs., 124-212; McDonald v. Morrow, 119-674; Sutton v. Phillips, 116-434; Bd. of Ed. v. Comrs., 111-578; University v. Holden, 63-410.

See, also, C. S., section 3480.

Sec. 5. County school fund; proviso. All moneys, stocks, bonds, and other property belonging to a county school fund; also the net proceeds from the sale of estrays; also the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal or military laws of the state; and all moneys which shall be paid by persons as an equivalent for exemption from military duty, shall belong to and remain in the several counties, and shall be faithfully appropriated for establishing and maintaining free public schools in the several counties of this state: Provided, that the amount collected in each county shall be annually reported to the superintendent of public instruction.

Const. 1868; Convention 1875.

In re Wiggins, 171-372; Collie v. Comrs., 145-178; State v. Maulsby, 139-584; School Directors v. Asheville, 137-507; Bearden v. Fullam, 129-479; School Directors v. Asheville, 128-249; Bd. of Ed. v. Henderson, 126-689; Carter v. R. R., 126-437; Godwin v. Fertilizer Works, 119-120; Sutton v. Phillips, 116-502; Burrell v. Hughes, 116-434; Bd. of Ed. v. Comrs., 111-578; Hodge v. R. R., 108-25; Katzenstein v. R. R., 84-688; University v. McIver, 72-76.

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Sec. 6. Election of trustees, and provisions for maintenance, of university. The general assembly shall have power to provide for the election of trustees of the University of North Carolina, in whom, when chosen, shall be vested all the privileges, rights, franchises and endowments thereof in anywise granted to or conferred upon the trustees of said university; and the general assembly may make such provisions, laws and regulations, from time to time, as may be necessary and expedient for the maintenance and management of said university.

1872-3, c. 86. See Const. 1776, sec. 41.

Finger v. Hunter, 130-529; Brewer v. University, 110-26; University v. R. R., 76-103; University v. McIver, 72-76.

Sec. 7. Benefits of the university. The general assembly shall provide that the benefits of the university, as far as practicable, be extended to the youth of the state free of expense for tuition; also, that all the property which has heretofore accrued to the state, or shall hereafter accrue, from escheats, unclaimed dividends, or distributive shares of the estates of deceased persons, shall be appropriated to the use of the university.

Const. 1868.

University v. R. R., 76-103; University v. Maultsby, 43-257.

Sec. 8. Board of education. The governor, lieutenant-governor, secretary of state, treasurer, auditor, superintendent of public instruction, and attorney-general shall constitute a state board of education.

Const. 1868.

Sec. 9. President and secretary. The governor shall be president and the superintendent of public instruction shall be secretary of the board of education.

Const. 1868.

Sec. 10. Powers of the board. The board of education shall succeed to all the powers and trusts of the president and directors of the literary fund of North Carolina, and shall have full power to legislate and make all needful rules and regulations in relation to free public schools and the educational fund of the state; but all acts, rules and regulations of said board may be altered, amended or repealed by the general assembly, and when so altered, amended or repealed, they shall not be reenacted by the board.

Const. 1868.

Board v. Makely, 139-34; Dosh v. Lumber Co., 128-85; Bd. of Ed. v. State Board, 114-317.

Sec. 11. First session of the board. The first session of the board of education shall be held at the capital of the state within fifteen days after the organization of the state government under this constitution; the time of future meetings may be determined by the board.

Const. 1868.

Sec. 12. Quorum. A majority of the board shall constitute a quorum for the transaction of business.

Const. 1868.

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Sec. 13. Expenses. The contingent expenses of the board shall be provided by the general assembly.

Const. 1868.

Ewart v. Jones, 116-578.

Sec. 14. Agricultural department. As soon as practicable after the adoption of this constitution, the general assembly shall establish and maintain, in connection with the university, a department of agriculture, of mechanics, of mining, and of normal instruction.

Const. 1868.

Chemical Co. v. Board of Agriculture, 111-136.

Sec. 15. Children must attend school. The general assembly is hereby empowered to enact that every child, of sufficient mental and physical ability, shall attend the public schools during the period between the ages of six and eighteen years, for a term of not less than sixteen months, unless educated by other means.

Const. 1868.

State v. Wolf, 145-440; Bear v. Comrs., 124-212.

ARTICLE X

HOMESTEADS AND EXEMPTIONS

Section 1. Exemption of personal property. The personal property of any resident of this state, to the value of five hundred dollars, to be selected by such resident, shall be and is hereby exempted from sale under execution or other final process of any court, issued for the collection of any debt.

Const. 1868.

Befarra v. Spell, 178-231; Grocery Co. v. Bails, 177-298; Gardner v. McConnaughey, 157-481; Cromer v. Self, 149-164; McKeithen v. Blue, 142-352; Lynn v. Cotton Mills, 130-621; Chitty v. Chitty, 118-647; Lockhart v. Bear, 117-301; Jones v. Alsbrook, 115-49; Wilmington v. Sprunt, 114-310; Dickens v. Long, 109-165; Shepherd v. Murrill, 90-208; Slaughter v. Winfrey, 85-159; Smith v. McMillan, 84-583; Durham v. Speeke, 82-87; Gheen v. Summey, 80-187; Gamble v. Rhyne, 80-183; Earle v. Hardie, 80-177; Richardson v. Wicker, 80-172; Welch v. Macy, 78-240; Pemberton v. McRae, 75-497; Vann v. B. & L. Assn., 75-494; Gaster v. Hardie, 75-460; Comrs. v. Riley, 75-144; Curlee v. Thomas, 74-51; Duvall v. Rollins, 71-218; Garrett v. Chesire, 69-396; Burns v. Harris, 67-140, 66-509; Dellinger v. Tweed, 66-206; Watts v. Leggett, 66-197; Johnson v. Cross, 66-167; Horton v. McCall, 66-159; McKeithan v. Terry, 64-25; Hill v. Kessler, 63-437; Dean v. King, 35-20.

See, also, C. S., sec. 728.

Sec. 2. Homestead. Every homestead, and the dwellings and buildings used therewith, not exceeding in value one thousand dollars, to be selected by the owner thereof, or in lieu thereof, at the option of the owner, any lot in a city, town or village, with the dwelling and buildings used thereon, owned and occupied by any resident of this state, and not exceeding the value of one thousand

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dollars, shall be exempt from sale under execution or other final process obtained on any debt. But no property shall be exempt from sale for taxes, or for payment of obligations contracted for the purchase of said premises.

Const. 1868.

Kirkwood v. Peden, 173-460; Sash Co. v. Parker, 153-130; Simmons v. Respass, 151-5; Carpenter v. Duke 144-291; McKeithen v. Blue, 142-352; Smith v. Bruton, 137-79; Vann v. Edwards, 135-661; Joyner v. Sugg, 132-580; Cawfield v. Owens, 129-286, 130-643; Lynn v. Cotton Mills, 130-621; Finger v. Hunter, 130-529; Watts ex parte, 130-237; Vann v. Edwards, 128-428; Coffin v. Smith, 128-255; Tiddy v. Graves, 126-620, 127-503; Toms v. Flack, 127-423; Brinkley v. Ballance, 126-396; McLamb v. McPhail, 126-618; Jennings v. Hinton, 126-48; Walton v. Bristol, 125-419; Weathers v. Borders, 124-615; Slocomb v. Ray, 123-571; Moore v. Wolf, 122-716; McGown v. McGown, 122-168; Campbell v. Potts, 119-533; Chitty v. Chitty, 118-647; Springer v. Colwell, 116-520; Jones v. Alsbrook, 115-52; Gardner v. Batts, 114-496; Fulton v. Roberts, 113-421; Vanstory v. Thornton, 112-196; Lovick v. Life Assn., 110-93; Tucker v. Tucker, 110-333; Vanstory v. Thornton, 110-10; Dickens v. Long, 109-169; Tucker v. Tucker, 108-237; Long v. Walker, 105-116; Ducker v. Wilson, 104-595; Hardy v. Carr, 104-33; Peck v. Culberson, 104-425; Hughes v. Hodges, 102-252; Jones v. Britton, 102-168; Lee v. Moseley, 101-311; Miller v. Miller, 89-402; Mebane v. Layton, 89-395; Campbell v. White, 95-491; Toms v. Fite, 93-274; Wilson v. Patton, 87-318; Butler v. Stainback, 87-216; Burton v. Spiers, 87-87; Cumming v. Bloodworth, 87-83; Murchison v. Plyler, 87-79; Gill v. Edwards, 87-76; Gregory v. Ellis, 86-579; Grant v. Edwards, 86-513; McDonald v. Dickson, 85-248; Wyche v. Wyche, 85-96; Smith v. High, 85-93; Gamble v. Watterson, 83-573; Watkins v. Overby, 83-165; Adrian v. Shaw, 82-474; Murphy v. McNeill, 82-221; Bruce v. Strickland, 81-267; Gheen v. Summey, 80-169; Richardson v. Wicker, 80-172; Wharton v. Leggett, 80-169; Suit v. Suit, 78-272; Bank v. Green, 78-247; Spoon v. Reid, 78-244; Bunting v. Jones, 78-242; Welch v. Macy, 78-240; Littlejohn v. Egerton, 77-379; Pemberton v. McRae, 75-497; Edwards v. Kearsey, 75-411; Comrs. v. Riley, 75-144; Brodie v. Batchelor, 75-51; Whitaker v. Elliott, 73-186; Abbott v. Cromartie, 72-292; Branch ex parte, 72-106; McAfee v. Bettis, 72-28; Mayho v. Cotton, 69-289; Hagar v. Nixon, 69-108; Crummen v. Bennet, 68-494; Cheatham v. Jones, 68-153; Martin v. Hughes, 67-293; Dellinger v. Tweed, 66-206; Watts v. Leggett, 66-197; Ladd v. Adams, 66-164; Poe v. Hardie, 65-447; Lute v. Reilly, 65-20; Sluder v. Rogers, 64-289; McKeithan v. Terry, 64-25.

See, also, C. S., sec. 728.

Sec. 3. Homestead exemption from debt. The homestead, after the death of the owner thereof, shall be exempt from the payment of any debt during the minority of his children, or any one of them.

Const. 1868.

Simmons v. Respass, 151-5; Joyner v. Sugg, 132-580; Jackson v. Comrs., 130-387; Spence v. Goodman, 128-273; Bruton v. McRae, 125-201; Chitty v. Chitty, 118-647; Stern v. Lee, 115-430; Duckers v. Long, 112-317; Vanstory v. Thornton, 112-218; Hughes v. Hodges, 102-252; Jones v. Britton, 102-168; Saylor v. Powell, 90-202; Gregory v. Ellis, 86-579; Gamble v. Watterson, 83-573; Simpson v. Wallace, 83-477; Wharton v. Leggett, 80-169; Welch v. Macy, 78-240; Beavan v. Speed, 74-544; Allen v. Shields, 72-504; Hagar v. Nixon, 69-108; Poe v. Hardie, 65-447; Hill v. Kessler, 63-437.

Sec. 4. Laborer's lien. The provisions of sections one and two of this article shall not be so construed as to prevent a laborer's lien for work done and performed for the person claiming such exemption, or a mechanic's lien for work done on the premises.

Const. 1868.

Isler v. Dixon, 140-530; Vann v. Edwards, 128-425; Broyhill v. Gaither, 119-443; Paper Co. v. Chronicle, 115-146; McMillan v. Williams, 109-252; Cumming v. Bloodworth, 87-83.

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Sec. 5. Benefit of widow. If the owner of a homestead die, leaving a widow but no children, the same shall be exempt from the debts of her husband, and the rents and profits thereof shall inure to her benefit during her widowhood, unless she be the owner of a homestead in her own right.

Const. 1868.

Caudle v. Morris, 160-168; Thomas v. Bunch, 158-175; Fulp v. Brown, 153-531; Simmons v. Respass, 151-5; Joyner v. Suggs, 132-580; Spence v. Goodwin, 128-277; Campbell v. Potts, 119-532; Vanstory v. Thornton, 112-218; Tucker v. Tucker, 108-237; Hughes v. Hodges, 102-252; Jones v. Britton, 102-168; Saylor v. Powell, 90-202; Simpson v. Wallace, 83-477; Richardson v. Wicker, 80-172; Wharton v. Leggett, 80-169; Beavan v. Speed, 74-544; Hagar v. Nixon, 69-108; Watts v. Leggett, 66-197; Johnson v. Cross, 66-167; Poe v. Hardie, 65-447.

See, also, C. S., sec. 748.

Sec. 6. Property of married women secured to them. The real and personal property of any female in this state acquired before marriage, and all property, real and personal, to which she may, after marriage, become in any manner entitled, shall be and remain the sole and separate estate and property of such female, and shall not be liable for any debts, obligations or engagements of her husband, and may be devised and bequeathed, and, with the written assent of her husband, conveyed by her as if she were unmarried.

Const. 1868.

Sills v. Bethea, 178-315; Lancaster v. Lancaster, 178-22; Deese v. Deese, 176-527; Freeman v. Lide, 176-434; Stallings v. Walker, 176-321; Gooch v. Bank, 176-213; Kilpatrick v. Kilpatrick, 176-182; Everett v. Ballard, 174-16; Freeman v. Belfer, 173-581; Satterwhite v. Gallagher, 173-525; Graves v. Johnson, 172-176; McCurry v. Furgason, 170-463; Warren v. Dail, 170-406; Butler v. Butler, 169-584; Royal v. Southerland, 168-405; Patterson v. Franklin, 168-75; McKinnon v. Caulk, 167-411; Norwood v. Totten, 166-648; Jackson v. Beard, 162-105; Greenville v. Gornto, 161-341; Sipe v. Herman, 161-107; Flanner v. Flanner, 160-126; Rea v. Rea, 156-529; Council v. Pridgen, 153-443; Richardson v. Richardson, 150-549; Jones v. Smith, 149-317; State v. Robinson, 143-620; Hodgin v. R. R., 143-93; Ball v. Paquin, 140-88; Smith v. Bruton, 137-83; Vann v. Edwards, 135-661; Perkins v. Brinkley, 133-154; State v. Jones, 132-1046; Hallyburton v. Slagle, 132-947; Ray v. Long, 132-891; Finger v. Hunter, 130-529; Watts ex parte, 130-237; Cawfield v. Owens, 129-286; Vann v. Edwards, 128-428; Coffin v. Smith, 128-255; Tiddy v. Graves, 126-620, 127-503; Toms v. Flack, 127-423; Brinkley v. Ballance, 126-396; McLamb v. McPhail, 126-218; Jennings v. Hinton, 126-48; Walton v. Bristol, 125-419; Weathers v. Borders, 124-615; Strather v. R. R., 123-198; Slocumb v. Ray, 123-571; Moore v. Wolf, 122-716; McLeod v. Williams, 122-455; Green v. Bennett, 120-396; Barrett v. Barrett, 120-131; Houck v. Somers, 118-611; Hall v. Walker, 118-380; Bank v. Howell, 118-273; Kirby v. Boyett, 118-258, 116-165; Bates v. Salton, 117-101; Zimmerman v. Robinson, 114-39; Strouse v. Cohen, 113-349; Jones v. Coffey, 109-515; Walker v. Long, 109-510; Thompson v. Wiggins, 109-508; Osborne v. Withers, 108-677; Kirkpatrick v. Holmes, 108-209; Ferguson v. Kinsland, 93-337; Southerland v. Hunter, 93-310; Long v. Barnes, 87-329; Cecil v. Smith, 81-285; O'Connor v. Harris, 81-279; Hall v. Short, 81-273; Holiday v. McMillan, 79-315; Manning v. Manning, 79-300; Manning v. Manning, 79-293; Kirkman v. Bank, 77-394; King v. Little, 77-138; Atkinson v. Richardson, 74-455; Roundtree v. Gay, 74-447; Pippen v. Wesson, 74-437; Purvis v. Carstaphan, 73-575; Harris v. Jenkins, 72-183; Shuler v. Milsaps, 71-297; Teague v. Downs, 69-280; Woody v. Smith, 65-116; Rowland v. Perry, 64-578.

See, also, C. S., sec. 2506 et seq.

Sec. 7. Husband may insure his life for the benefit of wife and children. The husband may insure his own life for the sole use and benefit of his wife and children, and in case of the death of the husband the amount thus insured shall

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be paid over to the wife and children, or to the guardian, if under age, for her or their own use, free from all the claims of the representatives of her husband, or any of his creditors.

Const. 1868.

Herring v. Sutton, 129-112; Hooker v. Sugg, 102-115; Burton v. Farinholt, 86-260; Burwell v. Snow, 107-82.

Sec. 8. How deed for homestead may be made. Nothing contained in the foregoing sections of this article shall operate to prevent the owner of a homestead from disposing of the same by deed; but no deed made by the owner of a homestead shall be valid without the voluntary signature and assent of his wife, signified on her private examination according to law.

Const. 1868.

Power Co. v. Power Co., 168-219; Dalrymple v. Cole, 156-353, 170-102; Davenport v. Fleming, 154-291; Sash Co. v. Parker, 153-130; Ball v. Paquin, 140-97; Joyner v. Sugg, 132-580; Cawfield v. Owen, 129-286, 130-644; Spence v. Goodwin, 128-276; Jordan v. Newsome, 126-558; Wittkowsky v. Gidney, 124-437; McLeod v. Williams, 122-455; Bevan v. Ellis, 121-224; Barret v. Barrett, 120-131; Chitty v. Chitty, 118-648; Thomas v. Fulford, 117-673; Shaffer v. Bledsoe, 117-144; Stern v. Lee, 115-442; Allen v. Volen, 114-564; Vanstory v. Thornton, 112-196; Leak v. Gay, 107-482; Long v. Walker, 105-116; Hughes v. Hodges, 102-252; Adrian v. Shaw, 82-474; Littlejohn v. Egerton, 76-468; Beavan v. Speed, 74-544; Lambert v. Kinnery, 74-348; Mayho v. Cotton, 69-289; Poe v. Hardie, 65-447.

See, also, C. S., sec. 729.

ARTICLE XI

PUNISHMENTS, PENAL INSTITUTIONS AND PUBLIC CHARITIES

Section 1. Punishments; convict labor; proviso. The following punishments only shall be known to the laws of this state, viz.: Death, imprisonment with or without hard labor, fines, removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under this state. The foregoing provision for imprisonment with hard labor shall be construed to authorize the employment of such convict labor on public works or highways, or other labor for public benefit, and the farming out thereof, where and in such manner as may be provided by law; but no convict shall be farmed out who has been sentenced on a charge of murder, manslaughter, rape, attempt to commit rape, or arson: Provided, that no convict whose labor may be farmed out shall be punished for any failure of duty as a laborer, except by a responsible officer of the state; but the convicts so farmed out shall be at all times under the supervision and control, as to their government and discipline, of the penitentiary board or some officer of this state.

Const. 1868; Convention 1875.

State v. Nipper, 166-272; State v. Young, 138-574; State v. Burke, 73-83; State v. King, 69-419.

Sec. 2. Death punishment. The object of punishments being not only to satisfy justice, but also to reform the offender, and thus prevent crime, murder, arson, burglary and rape, and these only, may be punishable with death, if the general assembly shall so enact.

Const. 1868.

State v. Lytle, 138-744; State v. Burke, 73-83; State v. King, 69-419.

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Sec. 3. Penitentiary. The general assembly shall, at its first meeting, make provision for the erection and conduct of a state's prison or penitentiary, at some central and accessible point within the state.

Const. 1868.

Day's Case, 124-367; Welker v. Bledsoe, 68-457; R. R. v. Holden, 63-436.

Sec. 4. Houses of correction. The general assembly may provide for the erection of houses of correction, where vagrants and persons guilty of misdemeanors shall be restrained and usefully employed.

Const. 1868.

In re Watson, 157-340; Moffitt v. Asheville, 103-237.

Sec. 5. Houses of refuge. A house or houses of refuge may be established whenever the public interest may require it, for the correction and instruction of other classes of offenders.

Const. 1868.

Sec. 6. The sexes to be separated. It shall be required, by competent legislation, that the structure and superintendence of penal institutions of the state, the county jails, and city police prisons secure the health and comfort of the prisoners, and that male and female prisoners be never confined in the same room or cell.

Const. 1868.

Moffitt v. Asheville, 103-237.

Sec. 7. Provision for the poor and orphans. Beneficent provision for the poor, the unfortunate and orphan, being one of the first duties of a civilized and Christian state, the general assembly shall, at its first session, appoint and define the duties of a board of public charities, to whom shall be entrusted the supervision of all charitable and penal state institutions, and who shall annually report to the governor upon their condition, with suggestions for their improvement.

Const. 1868.

Comrs. v. Spitzer, 173-147; Bd. of Ed. v. Comrs., 137-314; Miller v. Atkinson, 63-540.

Sec. 8. Orphan houses. There shall also, as soon as practicable, be measures devised by the state for the establishment of one or more orphan houses, where destitute orphans may be cared for, educated, and taught some business or trade.

Const. 1868.

Miller v. Atkinson, 63-537.

Sec. 9. Inebriates and idiots. It shall be the duty of the legislature, as soon as practicable, to devise means for the education of idiots and inebriates.

Const. 1868.

Board of Education v. State Board, 114-313.

Sec. 10. Deaf-mutes, blind and insane. The general assembly may provide that the indigent deaf-mute, blind and insane of the state shall be cared for at the charge of the state.

Const. 1868; 1879, cc. 314, 254, 268.

In re Boyette, 136-418; Hospital v. Fountain, 128-25; In re Hybart, 119-359.

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Sec. 11. Self-supporting. It shall be steadily kept in view by the legislature and the board of public charities that all penal and charitable institutions should be made as nearly self-supporting as is consistent with the purposes of their creation.

Const. 1868.

ARTICLE XII

MILITIA

Section 1. Who are liable to militia duty. All able-bodied male citizens of the state of North Carolina, between the ages of twenty-one and forty years, who are citizens of the United States, shall be liable to duty in the militia: Provided, that all persons who may be averse to bearing arms, from religious scruples, shall be exempt therefrom.

Const. 1868.

Sec. 2. Organizing, etc. The general assembly shall provide for the organizing, arming, equipping and discipline of the militia, and for paying the same, when called into active service.

Const. 1868.

Winslow v. Morton, 118-486; Worth v. Comrs., 118-112.

Sec. 3. Governor commander-in-chief. The governor shall be commander-in-chief, and shall have power to call out the militia to execute the law, suppress riots or insurrection, and to repel invasion.

Const. 1868.

Winslow v. Morton, 118-486; Worth v. Comrs., 118-112.

Sec. 4. Exemptions. The general assembly shall have power to make such exemptions as may be deemed necessary, and to enact laws that may be expedient for the government of the militia.

Const. 1868.

ARTICLE XIII

AMENDMENTS

Section 1. Convention, how called. No convention of the people of this state shall ever be called by the general assembly unless by the concurrence of two-thirds of all the members of each house of the general assembly, and except the proposition, convention or no convention, be first submitted to the qualified voters of the whole state, at the next general election, in a manner to be prescribed by law. And should a majority of the votes cast be in favor of said convention, it shall assemble on such day as may be prescribed by the general assembly.

Const. 1868; Convention 1875; Convention 1835; art. IV, sec. 1.

Moose v. Comrs., 172-461.

Sec. 2. How the constitution may be altered. No part of the constitution of this state shall be altered unless a bill to alter the same shall have been

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agreed to by three-fifths of each house of the general assembly. And the amendment or amendments so agreed to shall be submitted at the next general election to the qualified voters of the whole state, in such manner as may be prescribed by law. And in the event of their adoption by a majority of the votes cast, such amendment or amendments shall become a part of the constitution of this state.

Const. 1868; Convention 1875; Convention 1835, Art. IV, sec. 1.

Reade v. Durham, 173-668; Moose v. Comrs., 172-461; University v. McIver, 72-76.

ARTICLE XIV

MISCELLANEOUS

Section 1. Indictments. All indictments which shall have been found, or may hereafter be found, for any crime or offense committed before this constitution takes effect, may be proceeded upon in the proper courts, but no punishment shall be inflicted which is forbidden by this constitution.

Const. 1868.

Debnam v. Tel. Co., 126-835; Morris v. Hauser, 125-559; Day's Case, 124-365; State v. Moore, 120-567.

Sec. 2. Penalty for fighting duel. No person who shall hereafter fight a duel, or assist in the same as a second, or send, accept, or knowingly carry a challenge therefor, or agree to go out of the state to fight a duel, shall hold any office in this state.

Const. 1868.

Cole v. Sanders, 174-112; State v. Lord, 145-479.

Sec. 3. Drawing money. No money shall be drawn from the treasury but in consequence of appropriations made by law; and an accurate account of the receipts and expenditures of the public money shall be annually published.

Const. 1868.

Martin v. Clark, 135-180; White v. Auditor, 126-602; White v. Hill, 125-200; Garner v. Worth, 122-252; Cotton Mills v. Comrs., 108-685.

Sec. 4. Mechanics' lien. The general assembly shall provide, by proper legislation, for giving to mechanics and laborers an adequate lien on the subject-matter of their labor.

Const. 1868.

Mfg. Co. v. Andrews, 165-285; Moore v. Industrial Co., 138-306; Finger v. Hunter, 130-529; Tedder v. R. R., 124-344; Lester v. Houston, 101-605; Whitaker v. Smith, 81-341.

Sec. 5. Governor to make appointments. In the absence of any contrary provision, all officers of this state, whether heretofore elected or appointed by the governor, shall hold their positions only until other appointments are made by the governor, or, if the officers are elective, until their successors shall have been chosen and duly qualified according to the provisions of this constitution.

Const. 1868.

Markham v. Simpson, 175-135.

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Sec. 6. Seat of government. The seat of government in this state shall remain at the city of Raleigh.

Const. 1868.

Sec. 7. Holding office. No person who shall hold any office or place of trust or profit under the United States, or any department thereof, or under this state, or under any other state or government, shall hold or exercise any other office or place of trust or profit under the authority of this state, or be eligible to a seat in either house of the general assembly: Provided, that nothing herein contained shall extend to officers in the militia, justices of the peace, commissioners of public charities, or commissioners for special purposes.

Const. 1868; 1872-3, c. 88; Convention 1835, Art. IV, sec. 4.

Kendall v. Stafford, 178-461; Cole v. Sanders, 174-112; Bank v. Redwine, 171-559; State v. Knight, 169-333; Graves v. Barden, 169-8; Whitehead v. Pittman, 165-89; Midgett v. Gray, 158-133; McCullers v. Comrs., 158-75; State v. Lord, 145-479; State v. Smith, 145-476; Dunham v. Anders, 128-207; White v. Murray, 126-153; Downton v. Beardsley, 126-116; Barnhill v. Thompson, 122-493; Wood v. Bellamy, 120-223; Harkins v. Cathey, 119-659; Bank v. Worth, 117-152; McNeill v. Somers, 96-467; Doyle v. Raleigh, 89-133.

See, also, C. S., sec. 3200.

Sec. 8. Intermarriage of whites and negroes prohibited. All marriages between a white person and a negro, or between a white person and a person of negro descent to the third generation inclusive, are hereby forever prohibited.

Convention 1875.

Johnson v. Bd. of Ed., 166-468; Ashe v. Mfg. Co., 154-241; Ferrall v. Ferrall, 153-174; Hopkins v. Bowers, 111-175.

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APPENDIX II

CONSTITUTION OF THE UNITED STATES OF AMERICA

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.

ARTICLE I

Section 1. All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

Sec. 2. [1.] The house of representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

[2.] No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of the state in which he shall be chosen.

[3.] Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

The first sentence of this clause (art. I, sec. 1, cl. 3) is amended by amendment XIV, sec. 2.

[4.] When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

[5.] The house of representatives shall chuse their speaker and other officers; and shall have the sole power of impeachment.

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Sec. 3. [1.] The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Art. I, s. 3, cl. 1, is superseded by amendment XVII.

[2.] Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

[3.] No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

[4.] The vice president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

[5.] The senate shall chuse their other officers, and also a president pro tempore, in the absence of the vice president, or when he shall exercise the office of president of the United States.

[6.] The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside: And no person shall be convicted without the concurrence of two-thirds of the members present.

[7.] Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

Sec. 4. [1.] The times, places and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof; but the congress may at any time by law make or alter such regulations, except as to the places of chusing senators.

[2.] The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Sec. 5. [1.] Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

[2.] Each house may determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two-thirds, expel a member.

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[3.] Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

[4.] Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Sec. 6. [1.] The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place.

[2.] No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States which shall have been created or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

Sec. 7. [1.] All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

[2.] Every bill which shall have passed the house of representatives and the senate shall, before it become a law, be presented to the president of the United States. If he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law.

[3.] Every order, resolution, or vote to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

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Sec. 8. The congress shall have power [1.] To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

[2.] To borrow money on the credit of the United States;

[3.] To regulate commerce with foreign nations, and among the several states, and with the indian tribes;

[4.] To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

[5.] To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

[6.] To provide for the punishment of counterfeiting the securities and current coin of the United States;

[7.] To establish post offices and post roads;

[8.] To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

[9.] To constitute tribunals inferior to the supreme court;

[10.] To define and punish piracies and felonies committed on the high seas, and offences against the law of nations;

[11.] To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

[12.] To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

[13.] To provide and maintain a navy;

[14.] To make rules for the government and regulation of the land and naval forces;

[15.] To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;

[16.] To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers and the authority of training the militia according to the discipline prescribed by congress;

[17.] To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings;—and

[18.] To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

Sec. 9. [1.] The migration or importation of such persons as any of the states now existing shall think proper to admit shall not be prohibited by the

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congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

[2.] The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

[3.] No bill of attainder or ex post facto law shall be passed.

[4.] No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

[5.] No tax or duty shall be laid on articles exported from any state.

[6.] No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to, or from, one state, be obliged to enter, clear or pay duties in another.

[7.] No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

[8.] No title of nobility shall be granted by the United States: And no person holding any office of profit or trust under them shall, without the consent of the congress, accept of any present, emolument, office or title, of any kind whatever, from any king, prince, or foreign state.

Sec. 10. [1.] No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligations of contracts, or grant any title of nobility.

[2.] No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws, and the net produce of all duties and imposts laid by any state on imports or exports shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and controul of the congress.

[3.] No state shall, without the consent of congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II

Section 1. [1.] The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice president, chosen for the same term, be elected, as follows:

[2.] Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress: but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[3.] The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same

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state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately chuse by ballot one of them for president; and if no person have a majority, then from the five highest on the list the said house shall in like manner chuse the president. But in chusing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors shall be the vice president. But if there should remain two or more who have equal votes, the senate shall chuse from them by ballot the vice president.

Art. II, s. 1, cl. 3, is superseded by amendment XII.

[4.] The congress may determine the time of chusing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

[5.] No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

[6.] In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice president, and the congress may by law provide for the case of removal, death, resignation, or inability, both of the president and vice president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

[7.] The president shall, at stated times, receive for his services a compensation, which shall neither be increased or diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

[8.] Before he enter on the execution of his office, he shall take the following oath or affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will to the best of my ability preserve, protect and defend the constitution of the United States."

Sec. 2. [1.] The president shall be commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon

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any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

[2.] He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law: but the congress may by law vest the appointment of such inferior officers, as they think proper, in the president alone, in the courts of law, or in the heads of departments.

[3.] The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

Sec. 3. He shall from time to time give to the congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Sec. 4. The president, vice president and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III

Section 1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

Sec. 2. [1.] The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more states;—between a state and citizens of another state;—between citizens of different states,—between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

See amendment XI, as to suits against a state by citizens of another state or citizens or subjects of a foreign state.

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[2.] In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the congress shall make.

[3.] The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

Sec. 3. [1.] Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

[2.] The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV

Section 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

Sec. 2. [1.] The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

[2.] A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

[3.] No person held to service or labour in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour, but shall be delivered up on claim of the party to whom such service or labour may be due.

Sec. 3. [1.] New states may be admitted by the congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the congress.

[2.] The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

Sec. 4. The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

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ARTICLE V

The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress: Provided, that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE VI

[1.] All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution as under the confederation.

[2.] This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

[3.] The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII

The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty-seven and of the Independence of the United States of America the Twelfth. In Witness whereof we have hereunto subscribed our names,

G^o. WASHINGTON
Presidt and deputy from Virginia.

NEW HAMPSHIRE

JOHN LANGDON

NICHOLAS GILMAN

MASSACHUSETTS

NATHANIEL GORHAM

RUFUS KING

CONNECTICUT

WM. SAML JOHNSON

ROGER SHERMAN

CONSTITUTION OF THE UNITED STATES

NEW YORK

ALEXANDER HAMILTON

NEW JERSEY

WIL: LIVINGSTON
DAVID BREARLEY

WM PATTERSON
JONA: DAYTON

PENNSYLVANIA

B. FRANKLIN
ROBT. MORRIS
THOS. FITZSIMONS
JAMES WILSON

THOMAS MIFFLIN
GEO. CLYMER
JARED INGERSOLL
GOUV MORRIS

DELAWARE

GEO. READ
JOHN DICKINSON
JACO: BROOM

GUNNING BEDFORD JUN
RICHARD BASSETT

MARYLAND

JAMES MCHENRY
DANL CARROLL

DAN: OF ST. THOS JENIFER

VIRGINIA

JOHN BLAIR—

JAMES MADISON JR.

NORTH CAROLINA

WM. BLOUNT
HU WILLIAMSON

RICHD DOBBS SPAIGHT

SOUTH CAROLINA

CHARLES PINCKNEY
J. RUTLEDGE

CHARLES COTESWORTH PINCKNEY
PIERCE BUTLER

GEORGIA

WILLIAM FEW

ABR. BALDWIN

ATTEST:

WILLIAM JACKSON, *Secretary*

The states ratified the Constitution in the following order:

Delaware	December 7, 1787	South Carolina.....	May 23, 1788
Pennsylvania	December 12, 1787	New Hampshire	June 21, 1788
New Jersey	December 18, 1787	Virginia	June 26, 1788
Georgia.....	January 2, 1788	New York.....	July 26, 1788
Connecticut	January 9, 1788	North Carolina	November 21, 1789
Massachusetts	February 6, 1788	Rhode Island.....	May 29, 1790
Maryland	April 26, 1788		

Articles in addition to, and amendment of, the constitution of the United States of America, proposed by congress, and ratified by the legislatures of the several states, pursuant to the fifth article of the original constitution.

The first ten amendments were proposed by congress on September 25, 1789, and became effective on December 15, 1791.

[ARTICLE I.]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

APPENDIX II

[ARTICLE II.]

A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

[ARTICLE III.]

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war but in a manner to be prescribed by law.

[ARTICLE IV.]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized.

[ARTICLE V.]

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

[ARTICLE VI.]

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

[ARTICLE VII.]

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reëxamined in any court of the United States than according to the rules of the common law.

[ARTICLE VIII.]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

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[ARTICLE IX.]

The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people.

[ARTICLE X.]

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

[ARTICLE XI.]

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

The eleventh amendment was proposed by congress on March 5, 1794, and was declared in a message from the president to congress, dated the 8th of January, 1798, to have been ratified by the legislatures of three-fourths of the states.

[ARTICLE XII.]

The electors shall meet in their respective states, and vote by ballot for president and vice president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice president, and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice president, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate;—the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates and the votes shall then be counted;—the person having the greatest number of votes for president shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice president shall act as president, as in the case of the death or other constitutional disability of the president. The person having the greatest number of votes as vice president shall be the vice president, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list the senate shall choose the vice president; a

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quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of president shall be eligible to that of vice president of the United States.

The twelfth amendment was proposed by congress on December 12, 1803, and was declared in a proclamation of the secretary of state, dated September 25, 1804, to have been ratified by the legislatures of three-fourths of the states.

ARTICLE XIII

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Sec. 2. Congress shall have power to enforce this article by appropriate legislation.

The thirteenth amendment was proposed by congress on February 1, 1865, and was declared, in a proclamation of the secretary of state, dated December 18, 1865, to have been ratified by the legislatures of twenty-seven of the thirty-six states.

ARTICLE XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Sec. 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding indians not taxed. But when the right to vote at any election for the choice of electors for president and vice president of the United States, representatives in congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Sec. 3. No person shall be a senator or representative in congress, or elector of president and vice president, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But congress may by a vote of two-thirds of each house remove such disability.

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Sec. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Sec. 5. The congress shall have power to enforce, by appropriate legislation, the provisions of this article.

The fourteenth amendment was proposed by congress on June 16, 1866, and on July 21, 1868, congress adopted a concurrent resolution declaring that the legislatures of "three-fourths and more" of the states had ratified the amendment, and that it was a part of the Constitution of the United States and that it should be duly promulgated as such by the secretary of state. Accordingly the secretary of state issued a proclamation, dated July 28, 1868, declaring the fourteenth amendment to have been ratified by the legislatures of thirty of the thirty-six states.

ARTICLE XV

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.

Sec. 2. The congress shall have power to enforce this article by appropriate legislation.

The fifteenth amendment was proposed by congress on February 27, 1869, and was declared, in a proclamation of the secretary of state, dated March 30, 1870, to have been ratified by the legislatures of twenty-nine of the thirty-seven states.

ARTICLE XVI

The congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.

The sixteenth amendment was proposed by congress on July 12, 1909 (36 U. S. Stat. at L., 184), and was declared in a proclamation of the secretary of state, dated February 25, 1913, to have been ratified by the legislatures of three-fourths of the states. 37 U. S. Stat. at L., 1785.

ARTICLE XVII

The senate of the United States shall be composed of two senators from each state, elected by the people thereof, for six years; and each senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

When vacancies happen in the representation of any state in the senate, the executive authority of such state shall issue writs of election to fill such vacancies: Provided, that the legislature of any state may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

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This amendment shall not be so construed as to affect the election or term of any senator chosen before it becomes valid as part of the constitution.

The seventeenth amendment was proposed by congress on May 15, 1912 (37 U. S. Stat. at L., 646), and was declared in a proclamation of the secretary of state, dated May 31, 1913, to have been ratified by the legislatures of three-fourths of the states. 38 U. S. Stat. at L., 2049.

ARTICLE XVIII

Section 1. After one year from the ratification of this article, the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof, for beverage purposes, is hereby prohibited.

Sec. 2. The congress and the several states shall have concurrent power to enforce this article by appropriate legislation.

Sec. 3. This article shall be inoperative unless it shall have been ratified as an amendment to the constitution by the legislatures of the several states, as provided in the constitution, within seven years from the date of the submission hereof to the states by the congress.

The eighteenth amendment was proposed by congress on December 19, 1917 (40 U. S. Stat. at L., 1050), and was declared in a proclamation of the secretary of state, dated June 29, 1919, to have been ratified by the legislatures of three-fourths of the states. 40 U. S. Stat. at L., 1941.

ARTICLE XIX

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex.

Sec. 2. Congress shall have power to enforce this article by appropriate legislation.

The nineteenth amendment was proposed by congress on June 4, 1919, and was declared in a proclamation of the secretary of state, dated August 26, 1920, to have been ratified by the legislatures of three-fourths of the states.

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APPENDIX III

AUTHENTICATION OF RECORDS

- [1] Authentication of legislative acts and proof of judicial proceedings.
- [2] Proof of records not pertaining to courts.
- [3] Copies of foreign records, etc., relating to land titles in United States.

[1] Authentication of legislative acts and proof of judicial proceedings. The acts of the legislature of any state or territory, or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such state, territory, or country affixed thereto. The records and judicial proceedings of the courts of any state or territory, or of any such country, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, that the said attestation is in due form. And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the state from which they are taken.

U. S. Rev. Stat., s. 905.

[2] Proof of records not pertaining to courts. All records and exemplifications of books, which may be kept in any public office of any state or territory or of any country subject to the jurisdiction of the United States, not appertaining to a court, shall be proved or admitted in any court or office in any other state or territory, or in any such country, by the attestation of the keeper of the said records or books, and the seal of his office annexed, if there be a seal, together with a certificate of the presiding justice of the court of the county, parish, or district in which such office may be kept, or of the governor, or secretary of state, the chancellor or keeper of the great seal, of the state, or territory, or country, that the said attestation is in due form, and by the proper officers. If the said certificate is given by the presiding justice of a court, it shall be further authenticated by the clerk or prothonotary of the said court, who shall certify, under his hand and the seal of his office, that the said presiding justice is duly commissioned and qualified; or, if given by such governor, secretary, chancellor, or keeper of the great seal, it shall be under the great seal of the state, territory, or country aforesaid, in which it is made. And the said records and exemplifications, so authenticated, shall have such faith and credit given to them in every court and office within the United States as they have by law or usage in the courts or offices of the state, territory, or country, as aforesaid, from which they are taken.

U. S. Rev. Stat., s. 906.

[3] Copies of foreign records, etc., relating to land titles in United States. It shall be lawful for any keeper or person having the custody of laws, judgments, orders, decrees, journals, correspondence, or other public documents of any foreign government or its agents, relating to title to lands claimed by or under the United States, on the application of the head of one of the departments, the solicitor of the treasury, or the commissioner of the general land office, to authenticate copies thereof under his hand and seal, and to certify them to be correct and true copies of such laws, judgments, orders, decrees, journals, correspondence, or other public documents, respectively; and when such copies are certified by an American minister or consul, under his hand and seal of office, to be true copies of the originals, they shall be sealed up by him and returned to the solicitor of the treasury, who shall file them in his office, and cause them to be recorded in a book to be kept for that purpose. A copy of any such law, judgment, order, decree, journal, correspondence, or other public document, so filed, or of the same so recorded in said book, may be read in evidence in any court, where the title to land claimed by or under the United States may come into question, equally with the originals.

U. S. Rev. Stat., s. 907.

APPENDIX IV

REMOVAL OF CAUSES

From the State Courts to the District Courts of the United States.

[Federal enactments constituting chapter III, sections 28-39, of the Federal Judicial Code, Act of March 3, 1911, c. 231, "An act to codify, revise and amend the laws relating to the judiciary," '36 U. S. Stat. L. 1087.]

SEC.

- 28. Removal of suits from state to United States district courts.
- 29. Procedure for removal.
- 30. Suits under grants of land from different states.
- 31. Removal of causes against persons denied any civil rights, etc.
- 32. When petitioner is in actual custody of state court.
- 33. Suits and prosecutions against revenue officers, etc.
- 34. Removal of suits by aliens.
- 35. When copies of records are refused by clerk of state court.
- 36. Previous attachment bonds, orders, etc., remain valid.
- 37. Suits improperly in district court may be dismissed or remanded.
- 38. Proceedings in suits removed.
- 39. Time for filing record; return of record, how enforced.

Removal of suits from state to United States district courts.

Sec. 28. Any suit of a civil nature, at law or in equity, arising under the constitution or laws of the United States, or treaties made, or which shall be made, under their authority, of which the district courts of the United States are given original jurisdiction by this title, which may now be pending or which may hereafter be brought, in any state court, may be removed by the defendant or defendants therein to the district court of the United States for the proper district. Any other suit of a civil nature, at law or in equity, of which the district courts of the United States are given jurisdiction by this title, and which are now pending, or which may hereafter be brought, in any state court, may be removed into the district court of the United States for the proper district by the defendant or defendants therein, being nonresidents of that state. And when in any suit mentioned in this section there shall be a controversy which is wholly between citizens of different states, and which can be fully determined as between them, then either one or more of the defendants actually interested in such controversy may remove said suit into the district court of the United States for the proper district. And where a suit is now pending, or may hereafter be brought, in any state court, in which there is a controversy between a citizen of the state in which the suit is brought and a citizen of another state, any defendant, being such citizen of another state, may remove such suit into the district court of the United States for the proper district, at any time before the trial thereof, when it shall be made to appear to said district court that from prejudice or local influence he will not be able to obtain justice in such state court, or in any other state court to which the said defendant may, under the laws of the state, have the right, on account of such prejudice or local influence, to remove said cause: Provided, that if it further appear that said suit can be fully and justly determined as to the other defendants in the state court, without being affected by such prejudice or local influence, and that no party to the suit will be prejudiced by a separation of the parties, said district court may direct the suit to be remanded, so far as relates to such other defendants, to the state court, to be proceeded with therein.

At any time before the trial of any suit which is now pending in any district court, or may hereafter be entered therein, and which has been removed to said court from a state court on the affidavit of any party plaintiff that he had reason to believe and did believe that, from prejudice or local influence, he was unable to obtain justice in said state court, the district court shall, on application of the other party, examine

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into the truth of said affidavit and the grounds thereof, and unless it shall appear to the satisfaction of said court that said party will not be able to obtain justice in said state court, it shall cause the same to be remanded thereto.

Whenever any cause shall be removed from any state court into any district court of the United States, and the district court shall decide that the cause was improperly removed, and order the same to be remanded to the state court from whence it came, such remand shall be immediately carried into execution, and no appeal or writ of error from the decision of the district court so remanding such cause shall be allowed: Provided, that no case arising under an act entitled "An act relating to the liability of common carriers by railroad to their employees in certain cases," approved April twenty-second, nineteen hundred and eight, or any amendment thereto, and brought in any state court of competent jurisdiction, shall be removed to any court of the United States: and Provided further, that no suit brought in any state court of competent jurisdiction against a railroad company, or other corporation, or person engaged in and carrying on the business of a common carrier, to recover damages for delay, loss of or injury to property received for transportation by such common carrier under section twenty of the act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, as amended June twenty-ninth, nineteen hundred and six, April thirteenth, nineteen hundred and eight, February twenty-fifth, nineteen hundred and nine, and June eighteenth, nineteen hundred and ten, shall be removed to any court of the United States where the matter in controversy does not exceed, exclusive of interest and costs, the sum or value of \$3,000.

The last proviso to this section added by Act of Jan. 20, 1914, c. 11, 38 U. S. Stat. L., 279.

Procedure for removal.

Sec. 29. Whenever any party entitled to remove any suit mentioned in the last preceding section, except suits removable on the ground of prejudice or local influence, may desire to remove such suit from a state court to the district court of the United States, he may make and file a petition, duly verified, in such suit in such state court at the time, or any time before the defendant is required by the laws of the state or the rule of the state court in which such suit is brought to answer or plead to the declaration or complaint of the plaintiff, for the removal of such suit into the district court to be held in the district where such suit is pending, and shall make and file therewith a bond, with good and sufficient surety, for his or their entering in such district court, within thirty days from the date of filing said petition, a certified copy of the record in such suit, and for paying all costs that may be awarded by the said district court if said district court shall hold that such suit was wrongfully or improperly removed thereto, and also for their appearing and entering special bail in such suit if special bail was originally requisite therein. It shall then be the duty of the state court to accept said petition and bond and proceed no further in such suit. Written notice of said petition and bond for removal shall be given the adverse party or parties prior to filing the same. The said copy being entered within said thirty days as aforesaid in said district court of the United States, the parties so removing the said cause shall within thirty days thereafter, plead, answer, or demur to the declaration or complaint in said cause, and the cause shall then proceed in the same manner as if it had been originally commenced in the said district court.

Suits under grants of land from different states.

Sec. 30. If in any action commenced in a state court the title of land be concerned and the parties are citizens of the same state and the matter in dispute exceeds the sum or value of three thousand dollars, exclusive of interest and costs, the sum or value being made to appear, one or more of the plaintiffs or defendants, before the trial, may state to the court, and make affidavit if the court require it, that he or they claim, and shall rely upon, a right or title to the land under a grant from a state, and produce the original grant, or an exemplification of it, except where the loss of public records shall put it out of his or their power, and shall move that any one or more of the adverse party inform the court whether he or they claim a right or title to the land under a grant from some other state, the party or parties so required shall give such

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information, or otherwise not be allowed to plead such grant or give it in evidence upon the trial. If he or they inform the court that he or they do claim under such grant, any one or more of the party moving for such information may then, on petition and bond, as hereinbefore mentioned in this chapter, remove the cause for trial to the district court of the United States next to be holden in such district; and any one of either party removing the cause shall not be allowed to plead or give evidence of any other title than that by him or them stated as aforesaid as the ground of his or their claim.

Removal of causes against persons denied any civil rights, etc.

Sec. 31. When any civil suit or criminal prosecution is commenced in any state court, for any cause whatsoever, against any person who is denied or can not enforce in the judicial tribunals of the state, or in the part of the state where such suit or prosecution is pending, any right secured to him by any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction of the United States, or against any officer, civil or military, or other person, for any arrest or imprisonment or other trespasses or wrongs made or committed by virtue of or under color of authority derived from any law providing for equal rights as aforesaid, or for refusing to do any act on the ground that it would be inconsistent with such law, such suit or prosecution may, upon the petition of such defendant, filed in said state court at any time before the trial or final hearing of the cause, stating the facts and verified by oath, be removed for trial into the next district court to be held in the district where it is pending. Upon the filing of such petition all further proceedings in the state courts shall cease, and shall not be resumed except as hereinafter provided. But all bail and other security given in such suit or prosecution shall continue in like force and effect as if the same had proceeded to final judgment and execution in the state court. It shall be the duty of the clerk of the state court to furnish such defendant, petitioning for a removal, copies of said process against him, and of all pleadings, depositions, testimony, and other proceedings in the case. If such copies are filed by said petitioner in the district court on the first day of its session, the cause shall proceed therein in the same manner as if it had been brought there by original process; and if the said clerk refuses or neglects to furnish such copies, the petitioner may thereupon docket the case in the district court, and the said court shall then have jurisdiction therein, and may, upon proof of such refusal or neglect of said clerk, and upon reasonable notice to the plaintiff, require the plaintiff to file a declaration, petition, or complaint in the cause; and, in case of his default, may order a nonsuit, and dismiss the case at the costs of the plaintiff, and such dismissal shall be a bar to any further suit touching the matter in controversy. But if, without such refusal or neglect of said clerk to furnish such copies and proof thereof, the petitioner for removal fails to file copies in the district court, as herein provided, a certificate, under the seal of the district court, stating such failure, shall be given, and upon the production thereof in said state court the cause shall proceed therein as if no petition for removal had been filed.

When petitioner is in actual custody of state court.

Sec. 32. When all the acts necessary for the removal of any suit or prosecution, as provided in the preceding section, have been performed, and the defendant petitioning for such removal is in actual custody on process issued by said state court, it shall be the duty of the clerk of said district court to issue a writ of habeas corpus cum causa, and of the marshal, by virtue of said writ, to take the body of the defendant into his custody, to be dealt with in said district court according to law and the orders of said court, or, in vacation, of any judge thereof; and the marshal shall file with or deliver to the clerk of said state court a duplicate copy of said writ.

Suits and prosecutions against revenue officers, etc.

Sec. 33. When any civil suit or criminal prosecution is commenced in any court of a state against any officer appointed under or acting by authority of any revenue law of the United States now or hereafter enacted, or against any person acting under or by authority of any such officer, on account of any act done under color of

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his office or of any such law, or on account of any right, title, or authority claimed by such officer or other person under any such law; or is commenced against any person holding property or estate by title derived from any such officer, and affects the validity of any such revenue law, or against any officer of the courts of the United States for or on account of any act done under color of his office or in the performance of his duties as such officer; or when any civil suit or criminal prosecution is commenced against any person for or on account of anything done by him while an officer of either house of congress in the discharge of his official duty, in executing any order of such house, the said suit or prosecution may, at any time before the trial or final hearing thereof, be removed for trial into the district court next to be holden in the district where the same is pending, upon the petition of such defendant to said district court, and in the following manner: Said petition shall set forth the nature of the suit or prosecution and be verified by affidavit, and, together with a certificate signed by an attorney or counselor at law of some court of record of the state where such suit or prosecution is commenced, or of the United States, stating that, as counsel for the petitioner, he has examined the proceedings against him and carefully inquired into all the matters set forth in the petition, and that he believes them to be true, shall be presented to the said district court, if in session, or if it be not, to the clerk thereof at his office, and shall be filed in said office. The cause shall thereupon be entered on the docket of the district court, and shall proceed as a cause originally commenced in that court; but all bail and other security given upon such suit or prosecution shall continue in like force and effect as if the same had proceeded to final judgment and execution in the state court. When the suit is commenced in the state court by summons, subpœna, petition, or other process except *capias*, the clerk of the district court shall issue a writ of *certiorari* to the state court, requiring it to send to the district court the record and the proceedings in the cause. When it is commenced by *capias* or by any other similar form of proceeding by which a personal arrest is ordered, he shall issue a writ of *habeas corpus cum causa*, a duplicate of which shall be delivered to the clerk of the state court, or left at his office, by the marshal of the district or his deputy, or by some other person duly authorized thereto; and thereupon it shall be the duty of the state court to stay all further proceedings in the cause, and the suit or prosecution, upon delivery of such process, or leaving the same as aforesaid, shall be held to be removed to the district court, and any further proceedings, trial, or judgment therein in the state court shall be void. If the defendant in the suit or prosecution be in actual custody on mesne process therein, it shall be the duty of the marshal, by virtue of the writ of *habeas corpus cum causa*, to take the body of the defendant into his custody, to be dealt with in the cause according to law and the order of the district court, or in vacation, of any judge thereof; and if, upon the removal of such suit or prosecution, it is made to appear to the district court that no copy of the record and proceedings therein in the state court can be obtained, the district court may allow and require the plaintiff to proceed *de novo* and to file a declaration of his cause of action, and the parties may thereupon proceed as in actions originally brought in said district court. On failure of the plaintiff so to proceed, judgment of non *prosequitor* may be rendered against him, with costs for the defendant.

Sec. 33 as amended by Act of August 23, 1916, c. 399, 39 U. S. Stat. L., 532.

Removal of suits by aliens.

Sec. 34. Whenever a personal action has been or shall be brought in any state court by an alien against any citizen of a state who is, or at the time the alleged action accrued was, a civil officer of the United States, being a nonresident of that state wherein jurisdiction is obtained by the state court, by personal service of process, such action may be removed into the district court of the United States in and for the district in which the defendant shall have been served with the process, in the same manner as now provided for the removal of an action brought in a state court by the provisions of the preceding section.

When copies of records are refused by clerk of state court.

Sec. 35. In any case where a party is entitled to copies of the records and proceedings in any suit or prosecution in a state court, to be used in any court of the

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United States, if the clerk of said state court, upon demand, and the payment or tender of the legal fees, refuses or neglects to deliver to him certified copies of such records and proceedings, the court of the United States in which such records and proceedings are needed may, on proof by affidavit that the clerk of said state court has refused or neglected to deliver copies thereof, on demand as aforesaid, direct such record to be supplied by affidavit or otherwise, as the circumstances of the case may require and allow; and thereupon such proceeding, trial, and judgment may be had in the said court of the United States, and all such processes awarded, as if certified copies of such records and proceedings had been regularly before the said court.

Previous attachment bonds, orders, etc., remain valid.

Sec. 36. When any suit shall be removed from a state court to a district court of the United States, any attachment or sequestration of the goods or estate of the defendant had in such suit in the state court shall hold the goods or estate so attached or sequestered to answer the final judgment or decree in the same manner as by law they would have been held to answer final judgment or decree had it been rendered by the court in which said suit was commenced. All bonds, undertakings, or security given by either party in such suit prior to its removal shall remain valid and effectual notwithstanding said removal; and all injunctions, orders, and other proceedings had in such suit prior to its removal shall remain in full force and effect until dissolved or modified by the court to which such suit shall be removed.

Suits improperly in district court may be dismissed or remanded.

Sec. 37. If in any suit commenced in a district court, or removed from a state court to a district court of the United States, it shall appear to the satisfaction of the said district court, at any time after such suit has been brought or removed hereto, that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said district court, or that the parties to said suit have been improperly or collusively made or joined, either as plaintiffs or defendants, for the purpose of creating a case cognizable or removable under this chapter, the said district court shall proceed no further therein, but shall dismiss the suit or remand it to the court from which it was removed, as justice may require, and shall make such order as to costs as shall be just.

Proceedings in suits removed.

Sec. 38. The district court of the United States shall, in all suits removed under the provisions of this chapter, proceed therein as if the suit had been originally commenced in said district court, and the same proceedings had been taken in such suit in said district court as shall have been had therein in said state court prior to its removal.

Time for filing record; return of record, how enforced.

Sec. 39. In all causes removable under this chapter, if the clerk of the state court in which any such cause shall be pending shall refuse to any one or more of the parties or persons applying to remove the same, a copy of the record therein, after tender of legal fees for such copy, said clerk so offending shall, on conviction thereof in the district court of the United States to which said action or proceeding was removed, be fined not more than one thousand dollars, or imprisoned not more than one year, or both. The district court to which any cause shall be removable under this chapter shall have power to issue a writ of certiorari to said state court commanding said state court to make return of the record in any such cause removed as aforesaid, or in which any one or more of the plaintiffs or defendants have complied with the provisions of this chapter for the removal of the same, and enforce said writ according to law. If it shall be impossible for the parties or persons removing any cause under this chapter, or complying with the provisions for the removal thereof, to obtain such copy, for the reason that the clerk of said state court refuses to furnish a copy, on payment of legal fees, or for any other reason, the district court shall make an order requiring the prosecutor in any such action or proceeding to enforce forfeiture

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or recover penalty, as aforesaid, to file a copy of the paper or proceeding by which the same was commenced, within such time as the court may determine; and in default thereof the court shall dismiss the said action or proceeding; but if said order shall be complied with, then said district court shall require the other party to plead, and said action or proceeding shall proceed to final judgment. The said district court may make an order requiring the parties thereto to plead de novo; and the bond given, conditioned as aforesaid, shall be discharged so far as it requires copy of the record to be filed as aforesaid.

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NATURALIZATION LAWS

I

Act to Provide for Naturalization and Establishing the Bureau of Naturalization

- SEC. 1. Bureau of naturalization.
- SEC. 2. [Omitted.]
- SEC. 3. Courts which may naturalize.
- SEC. 4. Method of naturalization.
 - 1st. Declaration of intention.
 - 2d. Petition for citizenship; contents; verification; accompanying certificates.
 - 3d. Declaration on oath in open court.
 - 4th. Evidence of residence, etc.
 - 5th. Renunciation of titles, etc.
 - 6th. Widows and minor children.
 - 7th. Honorable discharge from, or certain service in, army or navy; effect.
 - 8th. American seamen.
 - 9th. Training for citizenship provided for.
 - 10th. Five years residence and mistaken exercise of citizenship before July 1, 1914.
 - 11th. Alien enemies.
 - 12th. Citizens in military or naval service of allies of United States.
 - 13th. Persons in military or naval service of United States at the end of war, or honorably discharged for disability.
- SEC. 5. Notice of petition by clerk.
- SEC. 6. Docketing petition; naturalization before election.
- SEC. 7. Anarchists and polygamists.
- SEC. 8. Must speak English.
- SEC. 9. Final hearing.
- SEC. 10. Proof of residence.
- SEC. 11. Examination, etc., in opposition.
- SEC. 12. Clerk to file declaration, etc., with bureau of naturalization.
- SEC. 13. Fees, etc.
- SEC. 14. Binding of petitions and declarations.
- SEC. 15. Suits to set aside citizenship.
- SEC. 16-25. [Omitted.]
- SEC. 26. Laws repealed.
- SEC. 27. Forms.
- SEC. 28. Naturalization regulations to be made by secretary of labor.
- SEC. 29. [Omitted.]
- SEC. 30. Naturalization of persons owing allegiance, but not citizens.
- SEC. 31. Date when act effective.

II

Other Acts Affecting Naturalization and Citizenship

- 1. Naturalization limited to white persons and those of African race.
- 2. Naturalization of Chinese prohibited.
- 3. Residence within the United States required for five years continuously.
- 4. Naturalization of alien enemies prohibited.
- 5. Alien seamen on merchant vessels.
- 6. Naturalization of declarants who have served in the naval reserve force in time of war.
- 7. Honorably discharged soldiers exempt from certain formalities.
- 8. Aliens honorably discharged from service in navy or marine corps.
- 9. Aliens honorably discharged from service in navy, marine corps, revenue-cutter service, or naval auxiliary service.
- 10. Aliens honorably discharged from military or naval forces of the United States after service during the present war.
- 11. Aliens who erroneously believe themselves citizens exempt from certain formalities.
- 12. Naturalization of wife and minor children of insane aliens making homestead entries under land laws of the United States.
- 13. Naturalization of deserters or persons who go abroad to avoid draft prohibited.
- 14. Official mail to be forwarded by clerks of courts to bureau of naturalization free of postage, and by registered mail if necessary.
- 15. Validating certain certificates of naturalization where declarations were filed prior to September 27, 1906.
- 16. Laws repealed by act of May 9, 1918.

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17. Citizenship by birth.
18. Citizenship of children born abroad of citizens.
19. Citizenship of women by marriage.
20. Children of persons naturalized under certain laws to be citizens.
21. Expatriation of citizens and their protection abroad.

I

AN ACT TO PROVIDE FOR A UNIFORM RULE FOR THE NATURALIZATION OF ALIENS THROUGHOUT THE UNITED STATES, AND ESTABLISHING THE BUREAU OF NATURALIZATION

[Act of June 29, 1906, 34 Stat. L. 596, as amended in sections 16, 17, and 19 by the act of congress approved March 4, 1909¹ (35 Stat. L., Part 1, p. 1102); in section 13 by the act of congress approved June 25, 1910² (36 Stat. L., Part 1, p. 830); by the act of congress approved March 4, 1913³ (37 Stat. L., Part 1, p. 736), creating the department of labor; and by the act of congress approved May 9, 1918 (Public, No. 144, 65th Cong., 2d sess.).⁴]

The bureau of naturalization.

SECTION 1. That the bureau of naturalization, under the direction and control of the secretary of labor, shall have charge of all matters concerning the naturalization of aliens. That it shall be the duty of the bureau of immigration to provide, for use at the various immigration stations throughout the United States, books of record, wherein the commissioners of immigration shall cause a registry to be made in the case of each alien arriving in the United States from and after the passage of this act of the name, age, occupation, personal description (including height, complexion, color of hair and eyes), the place of birth, the last residence, the intended place of residence in the United States, and the date of arrival of said alien, and, if entered through a port, the name of the vessel in which he comes. And it shall be the duty of said commissioners of immigration to cause to be granted to such alien a certificate of such registry, with the particulars thereof.

SEC. 2. [Omitted; authorizes the secretary of commerce and labor to provide necessary offices, etc.]

Courts which may naturalize.

SEC. 3. That exclusive jurisdiction to naturalize aliens as citizens of the United States is hereby conferred upon the following specified courts:

United States circuit⁵ and district courts now existing, or which may hereafter be established by congress in any state, United States district courts for the territories of Arizona,⁶ New Mexico,⁶ Oklahoma,⁶ Hawaii, and Alaska, the supreme court of the District of Columbia, and the United States courts for the Indian Territory; ⁶ also all courts of record in any state or territory now existing, or which may hereafter be created, having a seal, a clerk, and jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited.

That the naturalization jurisdiction of all courts herein specified—state, territorial, and federal—shall extend only to aliens resident within the respective judicial districts of such courts.

The courts herein specified shall, upon the requisition of the clerks of such courts, be furnished from time to time by the bureau of naturalization with such blank forms as may be required in the naturalization of aliens, and all certificates of naturalization shall be consecutively numbered and printed on safety paper furnished by said bureau.

Method of naturalization.

SEC. 4. That an alien may be admitted to become a citizen of the United States in the following manner, and not otherwise:

Declaration of intention.

First. He shall declare on oath before the clerk of any court authorized by this act to naturalize aliens, or his authorized deputy, in the district in which such alien resides,

¹See pp. 25-27.

²See p. 13.

³See p. 3.

⁴See p. 6.

⁵United States circuit courts abolished December 31, 1911, by act of congress approved March 3, 1911 (36 Stat. L., Part 1, p. 1167).

⁶United States territorial courts abolished by acts of congress conferring statehood.

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two years at least prior to his admission, and after he has reached the age of eighteen years, that it is bona fide his intention to become a citizen of the United States and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly, by name, to the prince, potentate, state, or sovereignty of which the alien may be at the time a citizen or subject. And such declaration shall set forth the name, age, occupation, personal description, place of birth, last foreign residence and allegiance, the date of arrival, the name of the vessel, if any, in which he came to the United States, and the present place of residence in the United States of said alien: *Provided, however*, that no alien who, in conformity with the law in force at the date of his declaration, has declared his intention to become a citizen of the United States shall be required to renew such declaration.

Petition for citizenship; contents; verification; accompanying certificate.

Second. Not less than two years nor more than seven years after he has made such declaration of intention he shall make and file, in duplicate, a petition in writing, signed by the applicant in his own handwriting and duly verified, in which petition such applicant shall state his full name, his place of residence (by street and number, if possible), his occupation, and, if possible, the date and place of his birth; the place from which he emigrated, and the date and place of his arrival in the United States, and, if he entered through a port, the name of the vessel on which he arrived; the time when and the place and name of the court where he declared his intention to become a citizen of the United States; if he is married he shall state the name of his wife and, if possible, the country of her nativity and her place of residence at the time of filing his petition; and if he has children, the name, date, and place of birth and place of residence of each child living at the time of the filing of his petition: *Provided*, that if he has filed his declaration before the passage of this act he shall not be required to sign the petition in his own handwriting.

The petition shall set forth that he is not a disbeliever in or opposed to organized government, or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government, a polygamist or believer in the practice of polygamy, and that it is his intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly, by name, to the prince, potentate, state, or sovereignty of which he at the time of filing his petition may be a citizen or subject, and that it is his intention to reside permanently within the United States, whether or not he has been denied admission as a citizen of the United States, and, if denied, the ground or grounds of such denial, the court or courts in which such decision was rendered, and that the cause for such denial has since been cured or removed, and every fact material to his naturalization and required to be proved upon the final hearing of his application.

The petition shall also be verified by the affidavits of at least two credible witnesses, who are citizens of the United States, and who shall state in their affidavits that they have personally known the applicant to be a resident of the United States for a period of at least five years continuously, and of the state, territory, or the District of Columbia,¹ in which the application is made for a period of at least one year immediately preceding the date of the filing of his petition, and that they each have personal knowledge that the petitioner is a person of good moral character, and that he is in every way qualified, in their opinion, to be admitted as a citizen of the United States.

At the time of filing his petition there shall be filed with the clerk of the court a certificate from the department of labor, if the petitioner arrives in the United States after the passage of this act, stating the date, place, and manner of his arrival in the United States, and the declaration of intention of such petitioner, which certificate and declaration shall be attached to and made a part of said petition.

Declaration on oath in open court.

Third. He shall, before he is admitted to citizenship, declare on oath in open court that he will support the constitution of the United States, and that he absolutely and

¹The word "district" amended by the act of May 9, 1918, to read "the District of Columbia."

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entirely renounces and adjures all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly, by name, to the prince, potentate, state, or sovereignty of which he was before a citizen or subject; that he will support and defend the constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same.

Evidence of residence, etc.

Fourth. It shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States five years at least, and within the state or territory where such court is at the time held one year at least, and that during that time he has behaved as a man of good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same. In addition to the oath of the applicant, the testimony of at least two witnesses, citizens of the United States, as to the facts of residence, moral character, and attachment to the principles of the constitution shall be required, and the name, place of residence, and occupation of each witness shall be set forth in the record.

Renunciation of titles, etc.

Fifth. In case the alien applying to be admitted to citizenship has borne any hereditary title, or has been of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to the above requisite, make an express renunciation of his title or order of nobility in the court to which his application is made, and his renunciation shall be recorded in the court.

Widows and minor children.

Sixth. When any alien who has declared his intention to become a citizen of the United States dies before he is actually naturalized the widow and minor children of such alien may, by complying with the other provisions of this act, be naturalized without making any declaration of intention.

Honorable discharge from or certain service in army or navy; effect.

¹Seventh. Any native-born Filipino of the age of twenty-one years and upward who has declared his intention to become a citizen of the United States and who has enlisted or may hereafter enlist in the United States navy or marine corps or the naval auxiliary service, and who, after service of not less than three years, may be honorably discharged therefrom, or who may receive an ordinary discharge with recommendation for reenlistment; or any alien, or any Porto Rican not a citizen of the United States, of the age of twenty-one years and upward, who has enlisted or entered or may hereafter enlist in or enter the armies of the United States, either the regular or the volunteer forces, or the national army, the national guard or naval militia of any state, territory, or the District of Columbia, or the state militia in federal service, or in the United States navy or marine corps, or in the United States coast guard, or who has served for three years on board of any vessel of the United States government, or for three years on board of merchant or fishing vessels of the United States of more than twenty tons burden, and while still in the service on a reenlistment or reappointment, or within six months after an honorable discharge or separation therefrom, or while on furlough to the army reserve or regular army reserve after honorable service, may, on presentation of the required declaration of intention, petition for naturalization without proof of the required five years residence within the United States if upon examination by the representative of the bureau of naturalization, in accordance with the

¹Section four of the act entitled "An act to establish a bureau of immigration and naturalization and to provide a uniform rule for the naturalization of aliens throughout the United States," approved June twenty-ninth, nineteen hundred and six, was amended by the act of May 9, 1918 (Pub. No. 144, 65th cong.) by adding subdivisions 7th to 13th, inclusive.

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requirements of this subdivision, it is shown that such residence can not be established; any alien serving in the military or naval service of the United States during the time this country is engaged in the present war may file his petition for naturalization without making the preliminary declaration of intention and without proof of the required five years residence within the United States; any alien declarant who has served in the United States army or navy, or the Philippine constabulary, and has been honorably discharged therefrom, and has been accepted for service in either the military or naval service of the United States on the condition that he becomes a citizen of the United States, may file his petition for naturalization upon proof of continuous residence within the United States for the three years immediately preceding his petition, by two witnesses, citizens of the United States, and in these cases only residence in the Philippine Islands and the Panama Canal Zone by aliens may be considered residence within the United States, and the place of such military service shall be construed as the place of residence required to be established for purposes of naturalization; and any alien, or any person owing permanent allegiance to the United States embraced within this subdivision, may file his petition for naturalization in the most convenient court without proof of residence within its jurisdiction, notwithstanding the limitation upon the jurisdiction of the courts specified in section three of the act of June twenty-ninth, nineteen hundred and six, provided he appears with his two witnesses before the appropriate representative of the bureau of naturalization and passes the preliminary examination hereby required before filing his petition for naturalization in the office of the clerk of the court, and in each case the record of this examination shall be offered in evidence by the representative of the government from the bureau of naturalization and made a part of the record at the original and any subsequent hearings; and, except as otherwise herein provided, the honorable discharge certificate of such alien, or person owing permanent allegiance to the United States, or the certificate of service showing good conduct, signed by a duly authorized officer, or by the masters of said vessels, shall be deemed prima facie evidence to satisfy all of the requirements of residence within the United States and within the state, territory, or the District of Columbia, and good moral character required by law, when supported by the affidavits of two witnesses, citizens of the United States, identifying the applicant as the person named in the certificate or honorable discharge, and in those cases only where the alien is actually in the military or naval service of the United States, the certificate of arrival shall not be filed with the petition for naturalization in the manner prescribed; and any petition for naturalization filed under the provisions of this subdivision may be heard immediately, notwithstanding the law prohibits the hearing of a petition for naturalization during thirty days preceding any election in the jurisdiction of the court. Any alien who, at the time of the passage of this act, is in the military service of the United States, who may not be within the jurisdiction of any court authorized to naturalize aliens, may file his petition for naturalization without appearing in person in the office of the clerk of the court and shall not be required to take the prescribed oath of allegiance in open court. The petition shall be verified by the affidavits of at least two credible witnesses who are citizens of the United States, and who shall prove in their affidavits the portion of the residence that they have personally known the applicant to have resided within the United States. The time of military service may be established by the affidavits of at least two other citizens of the United States, which, together with the oath of allegiance, may be taken in accordance with the terms of section seventeen hundred and fifty of the revised statutes of the United States after notice from and under regulations of the bureau of naturalization. Such affidavits and oath of allegiance shall be admitted in evidence in any original or appellate naturalization proceeding without proof of the genuineness of the seal or signature or of the official character of the officer before whom the affidavits and oath of allegiance were taken, and shall be filed by the representative of the government from the bureau of naturalization at the hearing as provided by section eleven of the act of June twenty-ninth, nineteen hundred and six. Members of the naturalization bureau and service may be designated by the secretary of labor to administer oaths relating to the administration of the naturalization law; and the requirement of

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section ten of notice to take depositions to the United States attorneys is repealed, and the duty they perform under section fifteen of the act of June twenty-ninth, nineteen hundred and six (thirty-fourth statutes at large, part one, page five hundred and ninety-six), may also be performed by the commissioner or deputy commissioner of naturalization: *Provided*, that it shall not be lawful to make a declaration of intention before the clerk of any court on election day or during the period of thirty days preceding the day of holding any election in the jurisdiction of the court: *Provided further*, that service by aliens upon vessels other than of American registry, whether continuous or broken, shall not be considered as residence for naturalization purposes within the jurisdiction of the United States, and such aliens cannot secure residence for naturalization purposes during service upon vessels of foreign registry.

During the time when the United States is at war no clerk of a United States court shall charge or collect a naturalization fee from an alien in the military service of the United States for filing his petition or issuing the certificate of naturalization upon admission to citizenship, and no clerk of any state court shall charge or collect any fee for this service unless the laws of the state require such charge to be made, in which case nothing more than the portion of the fee required to be paid to the state shall be charged or collected. A full accounting for all of these transactions shall be made to the bureau of naturalization in the manner provided by section thirteen of the act of June twenty-ninth, nineteen hundred and six.

American seamen.

Eighth.¹ That every seaman, being an alien, shall, after his declaration of intention to become a citizen of the United States, and after he shall have served three years upon such merchant or fishing vessels of the United States, be deemed a citizen of the United States for the purpose of serving on board any such merchant or fishing vessel of the United States, anything to the contrary in any act of congress notwithstanding; but such seaman shall, for all purposes of protection as an American citizen, be deemed such after the filing of his declaration of intention to become such citizen: *Provided*, that nothing contained in this act shall be taken or construed to repeal or modify any portion of the act approved March fourth, nineteen hundred and fifteen (thirty-eighth statutes at large, part one, page eleven hundred and sixty-four, chapter one hundred and fifty-three), being an act to promote the welfare of American seamen.

Training for citizenship provided for.

Ninth.¹ That for the purpose of carrying on the work of the bureau of naturalization of sending the names of the candidates for citizenship to the public schools and otherwise promoting instruction and training in citizenship responsibilities of applicants for naturalization, as provided in this subdivision, authority is hereby given for the reimbursement of the printing and binding appropriation of the department of labor upon the records of the treasury department from the naturalization fees deposited in the treasury through the bureau of naturalization for the cost of publishing the citizenship textbook prepared and to be distributed by the bureau of naturalization to those candidates for citizenship only who are in attendance upon the public schools, such reimbursement to be made upon statements by the commissioner of naturalization of books actually delivered to such student candidates for citizenship, and a monthly naturalization bulletin, and in this duty to secure the aid of and coöperate with the official state and national organizations, including those concerned with vocational education and including personal services in the District of Columbia, and to aid the local army exemption boards and coöperate with the war department in locating declarants subject to the army draft and expenses incidental thereto.

Five years residence and mistaken exercise of citizenship before July 1, 1914.

Tenth.¹ That any person not an alien enemy, who resided uninterruptedly within the United States during the period of five years next preceding July first, nineteen hundred and fourteen, and was on that date otherwise qualified to become a citizen of the United States, except that he had not made the declaration of intention required by

¹See note p. 1182.

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law, and who during or prior to that time, because of misinformation regarding his citizenship status, erroneously exercised the rights and performed the duties of a citizen of the United States in good faith, may file the petition for naturalization prescribed by law without making the preliminary declaration of intention required of other aliens, and upon satisfactory proof to the court that he has so acted may be admitted as a citizen of the United States upon complying in all respects with the other requirements of the naturalization law.

Alien enemies.

Eleventh.¹ No alien who is a native, citizen, subject, or denizen of any country, state, or sovereignty with which the United States is at war shall be admitted to become a citizen of the United States unless he made his declaration of intention not less than two nor more than seven years prior to the existence of the state of war, or was at that time entitled to become a citizen of the United States, without making a declaration of intention, or unless his petition for naturalization shall then be pending and is otherwise entitled to admission, notwithstanding he shall be an alien enemy at the time and in the manner prescribed by the laws passed upon that subject: *Provided*, that no alien embraced within this subdivision shall have his petition for naturalization called for a hearing, or heard, except after ninety days notice given by the clerk of the court to the commissioner or deputy commissioner of naturalization to be present, and the petition shall be given no final hearing except in open court and after such notice to the representative of the government from the bureau of naturalization, whose objection shall cause the petition to be continued from time to time for so long as the government may require: *Provided, however*, that nothing herein contained shall be taken or construed to interfere with or prevent the apprehension and removal, agreeably to law, of any alien enemy at any time previous to the actual naturalization of such alien; and section twenty-one hundred and seventy-one of the revised statutes of the United States is hereby repealed: *Provided further*, that the president of the United States may, in his discretion, upon investigation and report by the department of justice fully establishing the loyalty of any alien enemy not included in the foregoing exemption, except such alien enemy from the classification of alien enemy, and thereupon he shall have the privilege of applying for naturalization; and for the purposes of carrying into effect the provisions of this section, including personal services in the District of Columbia, the sum of \$400,000 is hereby appropriated to be available until June thirtieth, nineteen hundred and nineteen, including travel expenses for members of the bureau of naturalization and its field service only, and the provisions of section thirty-six hundred and seventy-nine of the revised statutes shall not be applicable in any way to this appropriation.

Citizens in military or naval service of allies of United States.

Twelfth.¹ That any person who, while a citizen of the United States and during the existing war in Europe, entered the military or naval service of any country at war with a country with which the United States is now at war, who shall be deemed to have lost his citizenship by reason of any oath or obligation taken by him for the purpose of entering such service, may resume his citizenship by taking the oath of allegiance to the United States prescribed by the naturalization law and regulations, and such oath may be taken before any court of the United States or of any state authorized by law to naturalize aliens or before any consul of the United States, and certified copies thereof shall be sent by such court or consul to the department of state and the bureau of naturalization, and the act (public fifty-five, sixty-fifth congress, approved October fifth, nineteen hundred and seventeen) is hereby repealed.

Persons in military or naval service of United States at end of war or honorably discharged for disability.

Thirteenth.¹ That any person who is serving in the military or naval forces of the United States at the termination of the existing war, and any person who before the termination of the existing war may have been honorably discharged from the military

¹See note p. 1182.

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or naval services of the United States on account of disability incurred in line of duty, shall, if he applies to the proper court for admission as a citizen of the United States, be relieved from the necessity of proving that immediately preceding the date of his application he has resided continuously within the United States the time required by law of other aliens, or within the state, territory, or the District of Columbia for the year immediately preceding the date of his petition for naturalization, but his petition for naturalization shall be supported by the affidavits of two credible witnesses, citizens of the United States, identifying the petitioner as the person named in the certificate of honorable discharge, which said certificate may be accepted as evidence of good moral character required by law, and he shall comply with the other requirements of the naturalization law.

Notice of petition by clerk.

SEC. 5. That the clerk of the court shall, immediately after filing the petition, give notice thereof by posting in a public and conspicuous place in his office, or in the building in which his office is situated, under an appropriate heading, the name, nativity, and residence of the alien, the date and place of his arrival in the United States, and the date, as nearly as may be, for the final hearing of his petition, and the names of the witnesses whom the applicant expects to summon in his behalf; and the clerk shall, if the applicant requests it, issue a subpoena for the witnesses so named by the said applicant to appear upon the day set for the final hearing, but in case such witnesses can not be produced upon the final hearing other witnesses may be summoned.

Docketing petition; naturalization before election.

SEC. 6. That petitions for naturalization may be made and filed during term time or vacation of the court and shall be docketed the same day as filed, but final action thereon shall be had only on stated days to be fixed by rule of the court, and in no case shall final action be had upon a petition until at least ninety days have elapsed after filing and posting the notice of such petition: *Provided*, that no person shall be naturalized nor shall any certificate of naturalization be issued by any court within thirty days preceding the holding of any general election within its territorial jurisdiction. It shall be lawful at the time and as a part of the naturalization of any alien, for the court, in its discretion, upon the petition of such alien, to make a decree changing the name of said alien, and his certificate of naturalization shall be issued to him in accordance therewith.

Anarchists and polygamists.

SEC. 7. That no person who disbelieves in or who is opposed to organized government, or who is a member of or affiliated with any organization entertaining and teaching such disbelief in or opposition to organized government, or who advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the government of the United States, or of any other organized government, because of his or their official character, or who is a polygamist, shall be naturalized or be made a citizen of the United States.

Must speak English.

SEC. 8. That no alien shall hereafter be naturalized or admitted as a citizen of the United States who cannot speak the English language: *Provided*, that this requirement shall not apply to aliens who are physically unable to comply therewith, if they are otherwise qualified to become citizens of the United States: and *Provided further*, that the requirements of this section shall not apply to any alien who has prior to the passage of this act declared his intention to become a citizen of the United States in conformity with the law in force at the date of making such declaration: *Provided further*, that the requirements of section eight shall not apply to aliens who shall hereafter declare their intention to become citizens and who shall make homestead entries upon the public lands of the United States and comply in all respects with the laws providing for homestead entries on such lands.

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Final hearing.

SEC. 9. That every final hearing upon such petition shall be had in open court before a judge or judges thereof, and every final order which may be made upon such petition shall be under the hand of the court and entered in full upon a record kept for that purpose, and upon such final hearing of such petition the applicant and witnesses shall be examined under oath before the court and in the presence of the court.

Proof of residence.

SEC. 10. That in case the petitioner has not resided in the state, territory, or the District of Columbia¹ for a period of five years continuously and immediately preceding the filing of his petition he may establish by two witnesses, both in his petition and at the hearing, the time of his residence within the state, provided that it has been for more than one year, and the remaining portion of his five years residence within the United States required by law to be established may be proved by the depositions of two or more witnesses who are citizens of the United States, upon notice to the bureau of naturalization.

Examinations, etc., in opposition.

SEC. 11. That the United States shall have the right to appear before any court or courts exercising jurisdiction in naturalization proceedings for the purpose of cross-examining the petitioner and the witnesses produced in support of his petition concerning any matter touching or in any way affecting his right to admission to citizenship, and shall have the right to call witnesses, produce evidence, and be heard in opposition to the granting of any petition in naturalization proceedings.

Clerk to file declarations, etc., with bureau of naturalization.

SEC. 12. That it is hereby made the duty of the clerk of each and every court exercising jurisdiction in naturalization matters under the provisions of this act to keep and file a duplicate of each declaration of intention made before him and to send to the bureau of naturalization at Washington, within thirty days after the issuance of a certificate of citizenship, a duplicate of such certificate, and to make and keep on file in his office a stub for each certificate so issued by him, whereon shall be entered a memorandum of all the essential facts set forth in such certificate. It shall also be the duty of the clerk of each of said courts to report to the said bureau, within thirty days after the final hearing and decision of the court, the name of each and every alien who shall be denied naturalization, and to furnish to said bureau duplicates of all petitions within thirty days after the filing of the same, and certified copies of such other proceedings and orders instituted in or issued out of said court affecting or relating to the naturalization of aliens as may be required from time to time by the said bureau.

In case any such clerk or officer acting under his direction shall refuse or neglect to comply with any of the foregoing provisions he shall forfeit and pay to the United States the sum of twenty-five dollars in each and every case in which such violation or omission occurs, and the amount of such forfeiture may be recovered by the United States in an action of debt against such clerk.

Clerks of courts having and exercising jurisdiction in naturalization matters shall be responsible for all blank certificates of citizenship received by them from time to time from the bureau of naturalization, and shall account for the same to the said bureau whenever required so to do by such bureau. No certificate of citizenship received by any such clerk which may be defaced or injured in such manner as to prevent its use as herein provided shall in any case be destroyed, but such certificate shall be returned to the said bureau; and in case any such clerk shall fail to return or properly account for any certificate furnished by the said bureau, as herein provided, he shall be liable to the United States in the sum of fifty dollars, to be recovered in an action of debt, for each and every certificate not properly accounted for or returned.

¹See footnote on page 1181.

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Fees, etc.

SEC. 13.¹ That the clerk of each and every court exercising jurisdiction in naturalization cases shall charge, collect, and account for the following fees in each proceeding:²

For receiving and filing a declaration of intention and issuing a duplicate thereof, one dollar.

For making, filing, and docketing the petition of an alien for admission as a citizen of the United States and for the final hearing thereon, two dollars; and for entering the final order and the issuance of the certificate of citizenship thereunder, if granted, two dollars.

The clerk of any court collecting such fees is hereby authorized to retain one-half of the fees collected by him in such naturalization proceeding; the remaining one-half of the naturalization fees in each case collected by such clerks, respectively, shall be accounted for in their quarterly accounts, which they are hereby required to render the bureau of naturalization, and paid over to such bureau within thirty days from the close of each quarter in each and every fiscal year, and the moneys so received shall be paid over to the disbursing clerk of the department of labor, who shall thereupon deposit them in the treasury of the United States, rendering an account therefor quarterly to the auditor for the state and other departments, and the said disbursing clerk shall be held responsible under his bond for said fees so received.

In addition to the fees herein required, the petitioner shall, upon the filing of his petition to become a citizen of the United States, deposit with and pay to the clerk of the court a sum of money sufficient to cover the expenses of subpoenaing and paying the legal fees of any witnesses for whom he may request a subpoena, and upon the final discharge of such witnesses they shall receive, if they demand the same from the clerk, the customary and usual witness fees from the moneys which the petitioner shall have paid to such clerk for such purpose, and the residue, if any, shall be returned by the clerk to the petitioner: *Provided*, that the clerks of courts exercising jurisdiction in naturalization proceedings shall be permitted to retain one-half of the fees in any fiscal year up to the sum of three thousand dollars, and that all fees received by such clerks in naturalization proceedings in excess of such amount shall be accounted for and paid over to said bureau as in case of other fees to which the United States may be entitled under the provisions of this act. The clerks of the various courts exercising jurisdiction in naturalization proceedings shall pay all additional clerical force that may be required in performing the duties imposed by this act upon the clerks of courts from fees received by such clerks in naturalization proceedings.

And in case the clerk of any court exercising naturalization jurisdiction collects fees in excess of the sum of six thousand dollars in any fiscal year the secretary of labor may allow salaries, for naturalization purposes only, to pay for clerical assistance, to be selected and employed by that clerk, additional to the clerical force for which clerks of courts are required by this section to pay from fees received by such clerks in naturalization proceedings, if in the opinion of said secretary the naturalization business of such clerk warrants further additional assistance: *Provided*, that in no event shall the whole amount allowed the clerk of a court and his assistants exceed the one-half of the gross receipts of the office of said clerk from naturalization fees during such fiscal year: *Provided further*, that when, at the close of any fiscal year, the business of such clerk of court indicates in the opinion of the secretary of labor that the naturalization fees for the succeeding fiscal year will exceed six thousand dollars the secretary of labor may authorize the continuance of the allowance of salaries for the additional clerical assistance herein provided for and employed on the last day of the fiscal year until such time as the remittances indicate in the opinion of said secretary that the fees for the then current fiscal year will not be sufficient to allow the additional clerical assistance authorized by this act.

That payment for the additional clerical assistance herein authorized shall be in the manner and under such regulations as the secretary of labor may prescribe.

¹Sec. 13 as amended by act of June 25, 1910.

²See last paragraph sec. 4, subsec. 7 (p. 1184), regarding fee to be paid by alien in military service who files petition during time United States is at war.

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Binding of petitions and declarations.

SEC. 14. That the declarations of intention and the petitions for naturalization shall be bound in chronological order in separate volumes, indexed, consecutively numbered, and made part of the records of the court. Each certificate of naturalization issued shall bear upon its face, in a place prepared therefor, the volume number and page number of the petition whereon such certificate was issued, and the volume number and page number of the stub of such certificate.

Suits to set aside citizenship.

SEC. 15. That it shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court having jurisdiction to naturalize aliens in the judicial district in which the naturalized citizen may reside at the time of bringing the suit, for the purpose of setting aside and canceling the certificate of citizenship on the ground of fraud or on the ground that such certificate of citizenship was illegally procured. In any such proceedings the party holding the certificate of citizenship alleged to have been fraudulently or illegally procured shall have sixty days personal notice in which to make answer to the petition of the United States; and if the holder of such certificate be absent from the United States or from the district in which he last had his residence, such notice shall be given by publication in the manner provided for the service of summons by publication or upon absentees by the laws of the state or the place where such suit is brought.

If any alien who shall have secured a certificate of citizenship under the provisions of this act shall, within five years after the issuance of such certificate, return to the country of his nativity, or go to any other foreign country, and take permanent residence therein, it shall be considered prima facie evidence of a lack of intention on the part of such alien to become a permanent citizen of the United States at the time of filing his application for citizenship, and, in the absence of countervailing evidence, it shall be sufficient in the proper proceeding to authorize the cancellation of his certificate of citizenship as fraudulent, and the diplomatic and consular officers of the United States in foreign countries shall from time to time, through the department of state, furnish the department of justice with the names of those within their respective jurisdictions who have such certificates of citizenship and who have taken permanent residence in the country of their nativity, or in any other foreign country, and such statements, duly certified, shall be admissible in evidence in all courts in proceedings to cancel certificates of citizenship.

Whenever any certificate of citizenship shall be set aside or canceled, as herein provided, the court in which such judgment or decree is rendered shall make an order canceling such certificate of citizenship and shall send a certified copy of such order to the bureau of naturalization; and in case such certificate was not originally issued by the court making such order it shall direct the clerk of the court to transmit a copy of such order and judgment to the court out of which such certificate of citizenship shall have been originally issued. And it shall thereupon be the duty of the clerk of the court receiving such certified copy of the order and judgment of the court to enter the same of record and to cancel such original certificate of citizenship upon the records and to notify the bureau of naturalization of such cancellation.

The provisions of this section shall apply not only to certificates of citizenship issued under the provisions of this act, but to all certificates of citizenship which may have been issued heretofore by any court exercising jurisdiction in naturalization proceedings under prior laws.

SECS. 16-25. [Omitted: Declare various acts to be crimes. In part superseded by U. S. Crim. Code, Act of March 4, 1909.]

Laws repealed.

SEC. 26. That sections twenty-one hundred and sixty-five, twenty-one hundred and sixty-seven, twenty-one hundred and sixty-eight, twenty-one hundred and seventy-three of the revised statutes of the United States of America, and section thirty-nine of

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chapter one thousand and twelve of the statutes at large of the United States of America for the year nineteen hundred and three, and all acts or parts of acts inconsistent with or repugnant to the provisions of this act are hereby repealed.

Forms.

SEC. 27. That substantially the following forms shall be used in the proceedings to which they relate:

DECLARATION OF INTENTION

(Invalid for all purposes seven years after the date hereof.)

....., SS:

I,, aged..... years, occupation....., do declare on oath (affirm) that my personal description is: Color....., complexion....., height, weight, color of hair, color of eyes, other visible distinctive marks.....; I was born in, on the day of, anno Domini; I now reside at; I emigrated to the United States of America from, on the vessel; my last foreign residence was It is my bona fide intention to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to, of which I am now a citizen (subject); I arrived at the (port) of, in the state (territory or the District of Columbia¹) of, on or about the day of, anno Domini; I am not an anarchist; I am not a polygamist nor a believer in the practice of polygamy; and it is my intention in good faith to become a citizen of the United States of America and to permanently reside therein. So help me, God.

(Original signature of declarant)

Subscribed and sworn to (affirmed) before me this day of, anno Domini

[L. S.]
(Official character of attestor.)

PETITION FOR NATURALIZATION

..... Court of

In the matter of the petition of to be admitted as a citizen of the United States of America.

To the Court:

The petition of respectfully shows:

First. My full name is

Second. My place of residence is number street, city of, state (territory or the District of Columbia¹) of

Third. My occupation is

Fourth. I was born on the day of at

Fifth. I emigrated to the United States from, on or about the day of, anno Domini, and arrived at the port of, in the United States, on the vessel

Sixth. I declared my intention to become a citizen of the United States on the day of, at, in the court of

Seventh. I am ... married. My wife's name is She was born in and now resides at I have children, and the name, date, and place of birth and place of residence of each of said children is as follows:;;

Eighth. I am not a disbeliever in or opposed to organized government or a member of or affiliated with any organization or body of persons teaching disbelief in organized government. I am not a polygamist nor a believer in the practice of polygamy. I

¹See footnotes on secs. 3 and 4, second subdivision.

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am attached to the principles of the constitution of the United States, and it is my intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to, of which at this time I am a citizen (or subject), and it is my intention to reside permanently in the United States.

Ninth. I am able to speak the English language.

Tenth. I have resided continuously in the United States of America for a term of five years at least immediately preceding the date of this petition, to wit, since, anno Domini, and in the state (territory or the District of Columbia¹) of for one year at least next preceding the date of this petition, to wit, since day of, anno Domini

Eleventh. I have not heretofore made petition for citizenship to any court. (I made petition for citizenship to the court of at, and the said petition was denied by the said court for the following reasons and causes, to wit,, and the cause of such denial has since been cured or removed.)

Attached hereto and made a part of this petition are my declaration of intention to become a citizen of the United States and the certificate from the department of labor required by law. Wherefore your petitioner prays that he may be admitted a citizen of the United States of America.

Dated.

(Signature of petitioner)

....., ss:

....., being duly sworn, deposes and says that he is the petitioner in the above-entitled proceeding; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

Subscribed and sworn to before me this day of, anno Domini

[L. S.]

.....,
Clerk of the Court.

AFFIDAVIT OF WITNESSES

..... Court of

In the matter of the petition of to be admitted a citizen of the United States of America.

....., ss:

....., occupation, residing at, and
....., occupation, residing at, each being severally, duly and respectively sworn, deposes and says that he is a citizen of the United States of America; that he has personally known, the petitioner above mentioned, to be a resident of the United States for a period of at least five years continuously immediately preceding the date of filing his petition, and of the state (territory or the District of Columbia¹) in which the above-entitled application is made for a period of years immediately preceding the date of filing his petition; and that he has personal knowledge that the said petitioner is a person of good moral character, attached to the principles of the constitution of the United States, and that he is in every way qualified, in his opinion, to be admitted as a citizen of the United States.

.....
.....

Subscribed and sworn to before me this day of, nineteen hundred and

[L. S.]

.....,
(Official character of attestor.)

¹See footnotes on secs. 3 and 4, subdivision, second.

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CERTIFICATE OF NATURALIZATION

Number

Petition, volume, page

Stub, volume, page

(Signature of holder)

Description of holder: Age,; height,; color,; complexion,; color of eyes,; color of hair,; visible distinguishing marks, Name, age, and place of residence of wife,, Names, ages, and places of residence of minor children,,;,;,

....., SS:

Be it remembered, that at a term of the court of, held at on the day of, in the year of our Lord nineteen hundred and,, who previous to his (her) naturalization was a citizen or subject of, at present residing at number street, city (town), state (territory or the District of Columbia¹), having applied to be admitted a citizen of the United States of America pursuant to law, and the court having found that the petitioner had resided continuously within the United States for at least five years and in this state for one year immediately preceding the date of the hearing of his (her) petition, and that said petitioner intends to reside permanently in the United States, had in all respects complied with the law in relation thereto, and that ..he was entitled to be so admitted, it was thereupon ordered by the said court that ..he be admitted as a citizen of the United States of America.

In testimony whereof the seal of said court is hereunto affixed on the day of, in the year of our Lord nineteen hundred and and of our independence the

[L. S.]

.....
(Official character of attester.)

STUB OF CERTIFICATE OF NATURALIZATION

No. of certificate

Name; age,

Declaration of intention, volume, page

Petition, volume, page

Name, age, and place of residence of wife,, Names, ages, and places of residence of minor children,,

.....
.....
.....

Date of order, volume, page

(Signature of holder)

Naturalization regulations to be made by secretary of labor.

SEC. 28. That the secretary of labor shall have power to make such rules and regulations as may be necessary for properly carrying into execution the various provisions of this act. Certified copies of all papers, documents, certificates, and records required to be used, filed, recorded, or kept under any and all of the provisions of this act shall be admitted in evidence equally with the originals in any and all proceedings under this act and in all cases in which the originals thereof might be admissible as evidence.

SEC. 29. [Omitted: Provides temporary appropriation.]

¹See footnotes on secs. 3 and 4, subdivision, second.

NATURALIZATION LAWS

Naturalization of persons owing allegiance, but not citizens.

SEC. 30. That all the applicable provisions of the naturalization laws of the United States shall apply to and be held to authorize the admission to citizenship of all persons not citizens who owe permanent allegiance to the United States, and who may become residents of any state or organized territory of the United States, with the following modifications: the applicant shall not be required to renounce allegiance to any foreign sovereignty; he shall make his declaration of intention to become a citizen of the United States at least two years prior to his admission; and residence within the jurisdiction of the United States, owing such permanent allegiance, shall be regarded as residence within the United States within the meaning of the five years residence clause of the existing law.

Date when act effective.

SEC. 31. That this act shall take effect and be in force from and after ninety days from the date of its passage: *Provided*, that sections one, two, twenty-eight, and twenty-nine shall go into effect from and after the passage of this act.

Approved June 29, 1906.

II

OTHER ACTS AFFECTING NATURALIZATION AND CITIZENSHIP

[For a list of sections repealed see supra, sec. 26 of act of June 29, 1906 (page 1189); subdivisions 11th and 12th, under sec. 4 (page 1185).]

NATURALIZATION LIMITED TO WHITE PERSONS AND THOSE OF THE AFRICAN RACE

[Act of February 18, 1875, amending act of July 14, 1870.]

SEC. 2169. The provisions of this title shall apply to aliens being free white persons; and to aliens of African nativity and to persons of African descent. (R. S. 1878, p. 380; 1 Comp. Stat. 1901, p. 1333.)

NATURALIZATION OF CHINESE PROHIBITED

[Act of May 6, 1882.]

SEC. 14. That hereafter no state court or court of the United States shall admit Chinese to citizenship; and all laws in conflict with this act are hereby repealed. (22 Stat. L., p. 61.)

RESIDENCE WITHIN THE UNITED STATES REQUIRED FOR FIVE YEARS CONTINUOUSLY

[Act of March 3, 1813.]

[The United States circuit court of appeals has held that sec. 2170 was not repealed by the naturalization act of June 29, 1906. (See *United States v. Rodiek*, 162 Fed., 469.)]

SEC. 2170. No alien shall be admitted to become a citizen who has not for the continued term of five years next preceding his admission resided within the United States. (R. S. 1878, p. 380; 1 Comp. Stat. 1901, p. 1333.)

NATURALIZATION OF ALIEN ENEMIES PROHIBITED

[Act of July 30, 1813, amending act of April 14, 1802.]

SEC. 2171. R. S. 1878, p. 380; 1 Comp. Stat. 1901, p. 1334. This section repealed by the act of May 9, 1918 (Pub. No. 144, 65th Cong.). (See sec. 4, subdivision 11th, supra, p. 1185.)

ALIEN SEAMEN OF MERCHANT VESSELS

[Act of July 7, 1872.]

SEC. 2174. R. S. 1878, p. 380; 1 Comp. Stat. 1901, p. 1334. This section repealed by the act of May 9, 1918 (Pub. No. 144, 65th Cong.). (See sec. 4, subdivisions 7th and 8th, supra, pp. 1182, 1184.)

APPENDIX V

NATURALIZATION OF DECLARANTS WHO HAVE SERVED IN THE NAVAL RESERVE FORCE IN TIME OF WAR

[Act of May 22, 1917.]

Be it enacted by the senate and house of representatives of the United States of America in congress assembled, That the act entitled "An act making appropriations for the naval service for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes," approved August twenty-ninth, nineteen hundred and sixteen, be, and the same is hereby, amended by adding after the proviso under the heading "naval reserve force," which reads as follows: "*Provided*, that citizens of the insular possessions of the United States may enroll in the naval auxiliary reserve," a further proviso as follows: *Provided further*, that such persons who are not citizens of the United States, but who have or shall have declared their intention to become citizens of the United States, and who are citizens of countries which are at peace with the United States, may enroll in the naval reserve force subject to the condition that they may be discharged from such enrollment at any time within the discretion of the secretary of the navy, and such persons who may, under existing law, become citizens of the United States, and who render honorable service in the naval reserve force in time of war for a period of not less than one year may become citizens of the United States without proof of residence on shore and without further requirement than proof of good moral character and certificate from the secretary of the navy that such honorable service was actually rendered. (Public Laws, 65th Cong., 1st sess., 1917, p. 84.)

HONORABLY DISCHARGED SOLDIERS EXEMPT FROM CERTAIN FORMALITIES

[Act of July 17, 1862.]

SEC. 2166. R. S. 1878, p. 379; 1 Comp. Stat., 1901, p. 1332. This section repealed by act of May 9, 1918 (Pub. No. 144, 65th Cong.), except as to honorably discharged soldiers who served in U. S. armies prior to January 1, 1900. (See sec. 4, subdivision 7th, *supra*, p. 1182; act May 9, 1918, sec. 2, *infra*, p. 1196.)

ALIENS HONORARLY DISCHARGED FROM SERVICE IN NAVY OR MARINE CORPS

[Act of July 26, 1894 (28 Stat. L., p. 124). Repealed by act of May 9, 1918 (Pub. No. 144, 65th Cong.).]

(See sec. 4, subdivision 7th, *supra*, p. 1182; act May 9, 1918, sec. 2, *infra*, p. 1196.)

ALIENS HONORABLY DISCHARGED FROM SERVICE IN NAVY, MARINE CORPS, REVENUE-CUTTER SERVICE, OR NAVAL AUXILIARY SERVICE

[Act of June 30, 1914 (38 Stat. L., pt. 1, p. 395). Repealed by act of May 9, 1918 (Pub. No. 144, 65th Cong.).]

(See sec. 4, subdivision 7th, *supra*, p. 1182; act May 9, 1918; sec. 2, *infra*, p. 1196.)

ALIENS HONORABLY DISCHARGED FROM MILITARY OR NAVAL FORCES OF THE UNITED STATES AFTER SERVICE DURING THE PRESENT WAR

[Public No. 21, 66th Cong., approved July 19, 1919.]

* * * * *

Any person of foreign birth who served in the military or naval forces of the United States during the present war, after final examination and acceptance by the said military or naval authorities, and shall have been honorably discharged after such acceptance and service, shall have the benefits of the seventh subdivision of section 4, of the act of June 29, 1906, 34 statutes at large, part 1, page 596, as amended, and shall not be required to pay any fee therefor; and this provision shall continue for the period of one year after all of the American troops are returned to the United States.

* * * * *

NATURALIZATION LAWS

ALIENS WHO ERRONEOUSLY BELIEVED THEMSELVES CITIZENS EXEMPT FROM CERTAIN FORMALITIES

[Act of June 25, 1910.]

SEC. 3. 36 Stat. L., pt. 1, p. 830. This section repealed by act of May 9, 1918 (Pub. No. 144, 65th Cong.). (See sec. 4, subdivision 10, p. 1184; act May 9, 1918, sec. 2, *infra*, p. 1196.)

NATURALIZATION OF WIFE AND MINOR CHILDREN OF INSANE ALIENS MAKING HOMESTEAD ENTRIES UNDER LAND LAWS OF THE UNITED STATES

[Act of February 24, 1911.]

Be it enacted by the senate and house of representatives of the United States of America in congress assembled, that when any alien, who has declared his intention to become a citizen of the United States, becomes insane before he is actually naturalized, and his wife shall thereafter make a homestead entry under the land laws of the United States, she and their minor children may, by complying with the other provisions of the naturalization laws, be naturalized without making any declaration of intention. (36 Stat. L., pt. 1, p. 929.)

NATURALIZATION OF DESERTERS OR PERSONS WHO GO ABROAD TO AVOID DRAFT PROHIBITED

[Act of August 22, 1912.]

SEC. 3954. [Amending Sec. 1998, U. S. R. S.] Every person who hereafter deserts the military or naval service of the United States, or who, being duly enrolled, departs the jurisdiction of the district in which he is enrolled, or goes beyond the limits of the United States, with intent to avoid any draft into the military or naval service, lawfully ordered, shall be liable to all the penalties and forfeitures of section 1996 of the revised statutes: *Provided*, that the provisions of this section and said section 1996 [*infra*] shall not apply to any person hereafter deserting the military or naval service of the United States in time of peace * * *. (4 Comp. Stat. 1916, p. 4828.)

[Act of March 3, 1865.]

SEC. 1996. All persons who deserted the military or naval service of the United States and did not return thereto or report themselves to a provost marshal within sixty days after the issuance of the proclamation by the president, dated the 11th day of March, 1865, are deemed to have voluntarily relinquished and forfeited their rights of citizenship, as well as their right to become citizens; and such deserters shall be forever incapable of holding any office of trust or profit under the United States, or of exercising any rights of citizens thereof. (R. S. 1878, p. 350; 1 Comp. Stat. 1901, p. 1269.)

OFFICIAL MAIL TO BE FORWARDED BY CLERKS OF COURTS TO BUREAU FREE OF POSTAGE, AND BY REGISTERED MAIL IF NECESSARY

[Act of October 6, 1917.]

* * * That all mail matter, of whatever class, relating to naturalization, including duplicate papers required by law or regulation to be sent to the bureau of naturalization by clerks of state or federal courts, addressed to the department of labor, or the bureau of naturalization, or to any official thereof, and indorsed "Official Business," shall be transmitted free of postage, and by registered mail if necessary, and so marked: *Provided further*, that if any person shall make use of such indorsement to avoid payment of postage or registry fee on his or her private letter, package or other matter in the mail, the person so offending shall be guilty of a misdemeanor and subject to a fine of \$300, to be prosecuted in any court of competent jurisdiction.

* * * * *

(Pub. Laws, 65th Cong., 1st Sess., 1917, p. 376. Postal Laws and Regs., sec. 278, par 3½, and sec. 498, par. 2.)

APPENDIX V

VALIDATING CERTAIN CERTIFICATES OF NATURALIZATION WHERE DECLARATIONS WERE FILED PRIOR TO SEPTEMBER 27, 1906

[Act of May 9, 1918.]

SEC. 3. That all certificates of naturalization granted by courts of competent jurisdiction prior to December thirty-first, nineteen hundred and eighteen, upon petitions for naturalization filed prior to January thirty-first, nineteen hundred and eighteen, upon declarations of intention filed prior to September twenty-seventh, nineteen hundred and six, are hereby declared to be valid in so far as the declaration of intention is concerned, but shall not be by this act further validated or legalized.

LAWS REPEALED BY ACT OF MAY 9, 1918

[The act of May 9, 1918, Public No. 144, sixty-fifth congress, contained the following provisions:]

SEC. 2. * * * That all acts or parts of acts inconsistent with or repugnant to the provisions of this act are hereby repealed; but nothing in this act shall repeal or in any way enlarge section twenty-one hundred and sixty-nine of the revised statutes, except as specified in the seventh subdivision of this act and under the limitation therein defined: *Provided*, that for the purposes of the prosecution of all crimes and offenses against the naturalization laws of the United States which may have been committed prior to this act the statutes and laws hereby repealed shall remain in full force and effect: *Provided further*, that as to all aliens who, prior to January first, nineteen hundred, served in the armies of the United States and were honorably discharged therefrom, section twenty-one hundred and sixty-six of the revised statutes of the United States shall be and remain in full force and effect, anything in this act to the contrary notwithstanding.

[And specifically repealed the following: Sections 2166, 2171, 2174, United States Revised Statutes; and so much of an act approved June 26, 1894, entitled "An act making provision for the naval service for the fiscal year ending June 30, 1895, and for other purposes" (28 Stat. L., p. 124), as relates to naturalization; and so much of an act approved June 30, 1914, entitled "An act making appropriations for the naval service for the fiscal year ending June 30, 1915, and for other purposes" (38 Stat. L., pt. 1, p. 392), as relates to naturalization; and so much of section 3 of an act approved June 25, 1910 (36 Stat. L., pt. 1, p. 830), as relates to naturalization; and public act, No. 55, sixty-fifth congress, approved October 5, 1917.]

CITIZENSHIP BY BIRTH

SEC. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. * * * (Constitution, Art. XIV.)

CITIZENSHIP OF CHILDREN BORN ABROAD OF CITIZENS

[Act of February 10, 1855, amending act of April 14, 1802.]

SEC. 1993. All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth citizens thereof, are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States. (R. S. 1878, p. 350; 1 Comp. Stat. 1901, p. 1268.)

CITIZENSHIP OF WOMEN BY MARRIAGE

[Act of February 10, 1855.]

SEC. 1994. Any woman who is now or may hereafter be married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen. (R. S. 1878, p. 350; 1 Comp. Stat. 1901, p. 1268.)

NATURALIZATION LAWS

CHILDREN OF PERSONS NATURALIZED UNDER CERTAIN LAWS TO BE CITIZENS

[Act of April 14, 1802.]

SEC. 2172. The children of persons who have been duly naturalized under any law of the United States, or who, previous to the passing of any law on that subject, by the government of the United States, may have become citizens of any one of the states, under the laws thereof, being under the age of twenty-one years at the time of the naturalization of their parents, shall, if dwelling in the United States, be considered as citizens thereof; and the children of persons who now are, or have been, citizens of the United States shall, though born out of the limits and jurisdiction of the United States, be considered as citizens thereof; but no person heretofore proscribed by any state, or who has been legally convicted of having joined the army of Great Britain during the Revolutionary War, shall be admitted to become a citizen without the consent of the legislature of the state in which such person was proscribed. (R. S. 1878, p. 380; 1 Comp. Stat. 1901, p. 1334.)

EXPATRIATION OF CITIZENS AND THEIR PROTECTION ABROAD

[Act of March 2, 1907.]

Be it enacted by the senate and house of representatives of the United States of America in congress assembled, That the secretary of state shall be authorized, in his discretion, to issue passports to persons not citizens of the United States as follows: Where any person has made a declaration of intention to become such a citizen as provided by law and has resided in the United States for three years a passport may be issued to him entitling him to the protection of the government in any foreign country: *Provided*, that such passport shall not be valid for more than six months and shall not be renewed, and that such passport shall not entitle the holder to the protection of this government in the country of which he was a citizen prior to making such declaration of intention.

SEC. 2. That any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with its laws, or when he has taken an oath of allegiance to any foreign state.

When any naturalized citizen shall have resided for two years in the foreign state from which he came, or for five years in any other foreign state, it shall be presumed that he has ceased to be an American citizen, and the place of his general abode shall be deemed his place of residence during said years: *Provided, however*, that such presumption may be overcome on the presentation of satisfactory evidence to a diplomatic or consular officer of the United States, under such rules and regulations as the department of state may prescribe: and *Provided, also*, that no American citizen shall be allowed to expatriate himself when this country is at war.

SEC. 3. That any American woman who marries a foreigner shall take the nationality of her husband. At the termination of the marital relation she may resume her American citizenship, if abroad, by registering as an American citizen within one year with a consul of the United States, or by returning to reside in the United States, or, if residing in the United States at the termination of the marital relation, by continuing to reside therein.

SEC. 4. That any foreign woman who acquires American citizenship by marriage to an American shall be assumed to retain the same after the termination of the marital relation if she continue to reside in the United States, unless she makes formal renunciation thereof before a court having jurisdiction to naturalize aliens, or if she resides abroad she may retain her citizenship by registering as such before a United States consul within one year after the termination of such marital relation.

SEC. 5. That a child born without the United States of alien parents shall be deemed a citizen of the United States by virtue of the naturalization of or resumption of American citizenship by the parent: *Provided*, that such naturalization or resumption takes

APPENDIX V

place during the minority of such child: and *Provided further*, that the citizenship of such minor child shall begin at the time such minor child begins to reside permanently in the United States.

SEC. 6. That all children born outside the limits of the United States who are citizens thereof in accordance with the provisions of section nineteen hundred and ninety-three of the revised statutes of the United States and who continue to reside outside the United States shall, in order to receive the protection of this government, be required upon reaching the age of eighteen years to record at an American consulate their intention to become residents and remain citizens of the United States, and shall be further required to take the oath of allegiance to the United States upon attaining their majority.

SEC. 7. That duplicates of any evidence, registration, or other acts required by this act shall be filed with the department of state for record. (34 Stat. L., pt. 1, p. 1228.)

APPENDIX VI

TABLE OF COMPARATIVE SECTIONS

The numbers preceding the dash refer to sections in Revisal of 1905 and lettered sections in Pell's Revisal of 1908; the numbers following the dash give the corresponding section in the Consolidated Statutes.

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7 —	10	57 —	64	107 —	113	156 —	159	217 —	5000
8 —	11	58 —	65	108 —	114	157 —	162	218 —	5001
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10 —	13	60 —	161	110 —	116	159 —	170	220 —	4999
11 —	14	61 —	67	111 —	117	160 —	164	221 —	5003
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APPENDIX VI

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261	— 275	319	— 33	380	— 425	445	— 488	508	— 548
262	— 276	320	— 19	381	— 427	446	— 489	509	— 549
263	— 277	321	— 2192	382	— 428	447	— 490	510	— 550
264	— 278	322	— 2192	383	— 429	448	— 491	511	— 551
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576	— 616	634	— 682	696	— 738	760	— 800	822	— 866
577	— 617	635	— 681	697	— 745	761	— 801	823	— 867
578	— 619	636	— 683	698	— 739	762	— 802	824	— 868
579	— 620	637	— 684	699	— 740	763	— 803	825	— 894
580	— 623	638	— 684	700	— 741	764	— 804	826	— 869
581	— 624	639	— 685	701	— 742	765	— 805	827	— 870
582	— 625	640	— 686	702	— 743	766	— 806	828	— 871
583	— 629	641	— 687	703	— 744	767	— 807	829	— 872
584	— 630	642	— 689	704	— 745	768	— 808	830	— 873
585	— 632	643	— 690	705	— 746	769	— 809	831	— 874
586	— 633	644	— 691	706	— 747	770	— 810	832	— 875
587	— 638	645	— 692	707	— 748	771	— 811	833	— 876
588	— 634	646	— 693	708	— 749	772	— 812	834	— 877
	639	647	— 694	709	— 751	773	— 813	835	— 878
589	— 640	648	— 695	710	— 752	774	— 814	836	— 879
590	— 641	649	— 696	711	— 753	775	— 815	837	— 880
591	— 642	650	— 697	712	— 753	776	— 816	838	— 881
	643	651	— 698	713	— 754	777	— 817	839	— 882
	644	652	— 699	714	— 755	778	— 818	840	— 882
592	— 645	653	— 700	715	— 756	779	— 819	841	— 883
593	— 646	654	— 700	716	— 757	780	— 820	842	— 884
594	— 647	655	— 701	717	— 758	781	— 821	843	— 885
595	— 631	656	— 702	718	— 759	782	— 822	844	— 885
	646	657	— 703	719	— 760	783	— 823	845	— 887
596	— 648	658	— 703	720	— 761	784	— 824	846	— 859
597	— 649	659	— 704	722	— 762	785	— 825	847	— 860
598	— 650	660	— 710	723	— 763	786	— 826	848	— 861
599	— 651	661	— 705	724	— 764	787	— 827	849	— 862
600	— 652	662	— 705	725	— 765	788	— 828	850	— 863
601	— 653	663	— 706	726	— 767	789	— 829	851	— 864
602	— 655	664	— 707	727	— 768	790	— 830	852	— 865
603	— 656	665	— 708	728	— 769	791	— 831	853	— 888
604	— 657	666	— 709	729	— 769	792	— 832	854	— 889
605	— 658	667	— 711	730	— 770	793	— 833	855	— 890
606	— 662	668	— 712	731	— 771		834	856	— 891
607	— 660	669	— 713	732	— 772	794	— 835	857	— 892
608	— 661	670	— 715	733	— 773	795	— 836	858	— 893
609	— 660	671	— 714	734	— 774	796	— 837	859	— 895
610	— 633	672	— 716	735	— 775	797	— 837	860	— 896
611	— 633	673	— 717	736	— 776	798	— 838	861	— 897
612	— 635	674	— 718	737	— 777	799	— 839	862	— 897
613	— 636	675	— 719	738	— 778	800	— 840	863	— 898
614	— 637	676	— 715	739	— 779	801	— 841	864	— 899
615	— 663	677	— 720	740	— 781	802	— 842	865	— 900
616	— 664	678	— 721	741	— 780	803	— 626	866	— 901
617	— 665	679	— 722	742	— 782	804	— 627		902
618	— 666	680	— 723	743	— 783	805	— 628	867	— 902
619	— 667	681	— 724	744	— 784	806	— 843	868	— 904
620	— 668	682	— 725	745	— 785	807	— 844	869	— 903
621	— 654	683	— 726	746	— 786	808	— 845	870	— 905
622	— 670	684	— 727	747	— 787	809	— 846	871	— 906

APPENDIX VI

Rev.	C. S.	Rev.	C. S.	Rev.	C. S.	Rev.	C. S.	Rev.	C. S.
872	— 907	934	— 972	994	—3298	1054	—1023	1110	—1075
873	— 908	935	— 974	995	—3299	1055	—1024	1111	—1076
874	— 909	936	— 975	996	—3302	1056	—1025	1112	—1077
875	— 910	937	— 976	997	—3305	1057	—1026	1113	—1062
876	— 911	938	— 977	998	—3304	1058	—1027	1114	—1064
877	— 912	939	— 978	999	—3305	1059	—1028	1115	—1063
878	— 914		979	1000	—3306	1060	—1029	1116	—1104
879	— 914		980	1001	—3322	1061	—1030	1117	—1065
880	— 915	940	— 981	1002	—3323	1062	—1031	1118	—1034
881	— 916	941	— 982	1003	—3324	1063	—1032	1119	—1036
882	— 917	942	— 983	1004	—3325	1064	—1060		7881
884	— 919	943	— 984	1005	—3326	1065	—1061	1120	—7882
885	— 920	944	— 985	1006	—3327	1066	—1035	1121	—7893
886	— 921	945	— 986	1007	—3328	1067	—1090	1122	—7885
887	— 922	946	— 991	1008	—3321	1068	—1092	1123	—7885
888	— 923	947	—2342	1008a	—3337	1069	—1093	1124	—7883
889	— 925	948	— 992	1009	—3339	1070	—1094	1125	—7889
890	— 926	949	— 993	1010	—3322	1071	—1095	1125a	—7889
891	— 930	949a	—3353		3329	1072	—1096	1126	—7889
892	— 931	950	— 995	1011	—3342	1073	—1059	1127	—7884
893	— 931	951	— 995	1012	—3334	1074	—1097	1128	—1126
894	— 932	952	— 997	1013	—3357	1075	—1098	1129	—1128
895	— 931	953	— 998	1014	—3361	1076	—1099	1130	—1138
896	— 933	954	— 999	1015	—3343	1077	—1100	1131	—1140
897	— 934	955	—1000	1015a	—3344	1079	—1101	1133	—1141
898	— 935	956	—1001	1016	—3348	1080	—1102	1134	—1129
899	— 936	957	—1002	1017	—3336	1081	—1103	1136	—1113
900	— 937	958	—1003		3349	1082	—1083		1135
901	— 938	959	—1004	1018	—3350	1083	—1083	1137	—1114
902	— 939	960	—1005	1019	—3359	1084	—1083	1138	—1121
903	— 940	961	—1006	1020	—3340	1085	—1083	1139	—1115
904	— 941	962	—1007	1021	—3340	1086	—1105	1140	—1116
905	— 942	963	—1008	1022	—3358	1087	—1106	1141	—1117
906	— 943	964	—1009	1023	—3358	1088	—1107	1142	—1118
907	— 943	964a	—1013	1024	—3365	1089	—1108	1143	—1119
908	— 944	965	—1010	1026	—3338	1090	—1109	1144	—1120
909	— 945	966	—1011	1027	—3356	1091	—1110	1145	—1127
910	— 946	967	—1609	1028	—3352	1092	—1111	1146	—1127
911	— 948	968	—1610	1029	—3341	1093	—1112	1147	—1144
912	— 949	969	—1613	1030	—3336	1094	—1053	1148	—1144
913	— 950	970	—1615	1031	—2578	1095	—1054	1149	—1145
914	— 951	971	—1616	1032	—2579	1096	—1035	1150	—1145
915	— 952	972	—1617	1033	—2582		1066	1151	—1145
916	— 954	973	—1619	1034	—2584	1096a	—1035	1152	—1148
917	— 955	974	— 987	1035	—2581	1097	—1040	1153	—1149
918	— 956	975	— 989	1036	— 994		1041	1154	—1151
919	— 957	976	— 988	1037	—2583		1042	1155	—1152
920	— 958	978	— 990	1038	—2580		1043	1156	—1153
921	— 959	979	—3308	1039	—2575		1044	1157	—1154
922	— 960	980	—3309	1040	—2576	1098	—1051	1158	—1155
923	— 961	981	—3310	1041	—2577	1099	—1066	1159	—1156
924	— 962	982	—3311	1042	—2585	1100	—1057		1157
925	— 969	983	—3312	1043	—2588	1100a	—1056	1160	—1147
926	— 963	984	—3313	1044	—2589	1101	—1058	1161	—1158
	967	985	—3314	1045	— 996	1102	—1058	1162	—1160
927	— 963	986	—3315	1046	—2594	1103	—1058	1163	—1151
	967	987	—3317	1047	—1014	1104	—1068	1164	—1161
928	— 964	988	—3319	1048	—1015	1105	—1069	1165	—1162
929	— 965	989	—3293	1049	—1018		1070	1166	—1162
930	— 966	990	—3294	1050	—1019	1106	—1071	1167	—1163
931	— 968	991	—3295	1051	—1020	1107	—1072	1168	—1164
932	— 970	992	—3296	1052	—1021	1108	—1073	1169	—1165
933	— 971	993	—3297	1053	—1022	1109	—1074	1170	—1165

TABLE OF COMPARATIVE SECTIONS

Rev.	C. S.	Rev.	C. S.	Rev.	C. S.	Rev.	C. S.	Rev.	C. S.
1171	—1165	1230	—1213	1289	—1281	1348	—1352	1409	—1464
1172	—1159	1231	—1209		1282	1349	—1353	1410	—1465
1173	—1166	1232	—1214	1290	—1283	1350	—1354	1411	—1467
1174	—1130	1233	—1218	1291	—1267	1351	—1355	1412	—1469
1175	—1131	1234	—1219	1292	—1268	1352	—1356	1413	—1470
1176	—1133	1235	—3421	1293	—1269	1353	—1357	1414	—1471
1177	—1184	1236	—1220	1294	—1270	1354	—1358	1415	—1472
1178	—1131	1237	—1220	1295	—1271	1355	—1359	1416	—1482
1179	—1168	1238	—1221	1296	—1280	1356	—1361	1417	—1484
	1172	1239	—1222	1297	—1272	1357	—1362	1418	—1485
1180	—1170	1240	—1222	1298	—1273	1358	—1363	1419	—1473
	1171	1241	—1223	1299	—1274	1359	—1364	1420	—1474
1181	—1170		1224	1300	—1275	1360	—1365	1421	—1475
1182	—1175	1242	—1136	1301	—1277	1361	—1367	1422	—1476
1183	—1173	1243	—1137	1302	—1278	1362	—1368	1423	—1477
1184	—1173	1244	—1150	1303	—1284	1363	—1369	1424	—1478
1185	—1174	1245	—1167	1304	—1285	1364	—1370	1425	—1479
1186	—1174	1246	—1188	1305	—1286	1365	—1371	1426	—1480
1187	—1174	1247	—1113	1306	—1287	1366	—1372	1427	—1481
1188	—1176	1248	—1134	1307	—1288	1367	—1373	1428	—1504
1189	—1177	1249	—1225	1308	—1289	1368	—1374	1429	—1505
1190	—1169	1250	—1226	1309	—1290	1369	—1375	1430	—1505
1191	—1178	1251	—1227	1310	—1291	1370	—1376	1431	—1502
1192	—1179	1252	—1228	1311	—1292	1371	—1377	1432	—1506
1193	—1180	1253	—1229		1293	1372	—1378	1433	—1507
1194	—1181	1254	—1230	1312	—1293	1373	—1379	1434	—1508
1195	—1182	1255	—1231	1314	—1294	1374	—1380	1435	—1509
1196	—1185	1256	—1232	1316	—1295	1375	—1381	1436	—1510
1197	—1143	1257	—1233	1317	—1296		1382	1437	—1511
1198	—1187	1258	—1235	1318	—1297	1376	—1322	1438	—1513
1199	—1192	1259	—1236	1320	—1297	1377	—1323	1439	—1514
1200	—1193	1260	—1237	1321	—1297	1378	—1324	1440	—1503
1201	—1194	1261	—1238	1322	—1299	1379	—1325	1441	—1512
	1199	1262	—1239	1323	—1300	1380	—1326	1442	—1515
1202	—1194	1263	—1240	1324	—1309	1381	—1327	1443	—1516
1203	—1195	1264	—1241	1325	—1310	1382	—1329	1444	—1486
1204	—1195	1265	—1247	1326	—1311	1383	—1329	1445	—1487
1205	—1196	1266	—1242	1327	—1335	1384	—1330	1446	—1488
1206	—1197	1267	—1243	1328	—1336	1385	—1331	1447	—1489
1207	—1198	1268	—1244	1329	—1338	1386	—1332	1448	—1494
1208	—1199	1269	—1245	1330	—1339	1387	—1333	1449	—1491
1209	—1191	1270	—1246	1331	—1340	1388	—1334	1450	—1492
1210	—1191	1271	—1248	1332	—1341	1389	—1312	1451	—1493
1211	—1200	1272	—1249	1333	—1342	1390	—1313	1452	—1495
1212	—1201	1273	—1250	1334	—1343	1391	—1314	1453	—1496
1213	—1202	1274	—1251	1335	—1317	1392	—1315	1454	—1497
1214	—1203	1275	—1252	1336	—1318	1393	—1316	1455	—1498
1215	—1203	1276	—1253	1336a	—7207	1394	—1387	1456	—1499
1216	—1204	1277	—1254		7212	1396	—1390	1457	—1500
1217	—1206	1278	—1255	1337	—1319		1391	1458	—1500
1218	—1207	1279	—1256	1338	—1320	1397	—1392	1459	—1500
1219	—1208	1280	—1257	1339	—1321	1398	—1393	1460	—1500
1220	—1216	1281	—1258	1340	—1344	1399	—1394	1461	—1500
1221	—1217	1282	—1258	1341	—1345	1400	—1395	1462	—1500
1222	—1113	1283	—1259	1342	—1349	1401	—1396	1463	—1500
	1209		1260	1343	—1346	1402	—1397	1464	—1500
1223	—1208		1279	1343a	—7208	1403	—1398	1465	—1500
1224	—1210	1284	—1261	1343b	—7210	1404	—1399	1466	—1500
1225	—1210	1285	—1262	1343c	—7211	1405	—1400	1467	—1500
1226	—1215		1263	1344	—1348	1406	—1401	1468	—1500
1227	—1211	1286	—1264	1345	—1350	1407	—1402	1469	—1500
1228	—1212	1287	—1265	1346	—1347	1408	—1462	1470	—1483
1229	—1212	1288	—1266	1347	—1351	1409	—1463	1471	—1500

APPENDIX VI

Rev.	C. S.	Rev.	C. S.	Rev.	C. S.	Rev.	C. S.	Rev.	C. S.
1472	—1500	1533	—1405	1593	—1748	1649	—1816	1709	—7557
1473	—1500	1534	—1407	1594	—1749	1650	—1817	1710	—7559
1474	—1500	1535	—1408	1595	—1750	1651	—1818	1711	—7561
1475	—1500	1536	—1406	1596	—1751	1652	—1809	1712	—7560
1476	—1500		1408	1597	—1754		1810	1713	—7562
1477	—1500	1537	—1409	1598	—1763		1812	1714	—7563
1478	—1500	1538	—1410	1599	—1765	1653	—1814	1715	—7564
1479	—1517	1539	—1411	1600	—1761	1654	—1815	1716	—7566
	1518	1540	— 631	1601	—1762	1655	—1822	1717	—7565
	1519	1541	—1421	1602	—1766	1656	—1823	1718	—7567
1480	—1520	1542	—1412	1603	—1773	1657	—1824	1719	—7568
1481	—1521	1543	—1418	1604	—1782	1658	—1825	1720	—1385
1482	—1522	1544	—1413	1605	—1783	1659	—1826	1721	—7569
1483	—1523	1545	—1414	1606	—1767	1660	—1827	1722	—7570
1484	—1524	1546	—1419	1607	—1774	1661	—1828	1723	—7572
1485	—1525	1547	—1415	1608	—1775	1662	—1829	1724	—7573
1486	—1525	1548	—1416	1609	—1776	1663	—1830	1725	—7571
1487	—1526	1549	—1417	1610	—1755	1664	—1832	1726	—7574
1488	—1527	1550	—1420	1610a	—7778	1665	—1834	1727	—7581
1489	—1528	1551	—1422	1611	—1778	1666	—1836	1728	—7577
1490	—1529	1552	—1423	1612	—1768	1667	—1837	1729	—7578
1491	—1530	1553	—1424	1613	—1756	1668	—1838		7579
1492	—1531	1554	—1426	1614	—4157	1669	—1839	1730	—7580
1493	—1532	1555	—1427	1614a	—1770	1670	—1833	1731	—7558
1494	—1533	1555a	—3887	1614b	—1769	1671	—1835	1732	—7576
1495	—1534	1556	—1654	1614c	—1772	1672	—1842	1733	—7575
1495a	—1519	1557	—1655	1615	—1771	1673	—1843	1734	—7567
1496	—1535	1558	—1656	1616	—1779	1674	—1844		7578
1497	—1433	1559	—1657	1617	—1780	1675	—1845	1735	—7578
1498	—1434	1560	—1658	1618	—1781	1676	—1846	1736	—7585
1499	—1435	1561	—1659	1619	—1777	1677	—1847	1737	—7586
1500	—1436	1562	—1660	1620	—1797	1678	—1848	1738	—7587
1501	—1438	1563	—1661	1621	—1798	1679	—1850	1739	—7588
1502	—1439	1564	—1662	1622	—1786	1680	—1851	1740	—7589
1503	—1440	1565	—1665	1623	—1787	1681	—1841	1741	—7590
1504	— 364	1566	—1666	1624	—1788	1682	—1855	1742	—7590
1505	—1764	1567	—1667	1625	—1789	1683	—1858	1743	—7591
1506	—1443	1568	—1668	1626	—1790	1684	—1859	1744	—7592
1507	—1444	1569	—1663	1627	—1791	1685	—1860	1745	—7591
1508	—1445	1570	—1664	1628	—1792	1686	—1861	1746	—7591
1509	—1446	1571	—1695	1629	—1792	1686a	—3517	1747	—7593
1510	—1448	1572	—1697	1630	—1793	1687	—2142	1748	—7594
1511	—1447	1573	—1698	1631	—1795	1688	—2143	1749	—7595
	1449	1574	—1700	1632	—1796	1689	—2144	1750	—7596
1512	—1450	1575	—1701	1633	—1794	1690	—2145	1751	—7597
	1451	1576	—1702	1634	—1799	1691	—2146	1752	—7598
1513	—1452	1577	—1703		1802	1692	—7554	1753	—7599
1514	—1453	1578	—1734	1635	—1799	1693	—7540	1754	—7600
1515	—1454	1579	—1735		1802	1694	—7541	1755	—7601
1516	—1455	1580	—1736	1636	—1801	1695	—7542	1756	—7602
1517	—1456	1581	—1737		1802	1696	—7543	1757	—7603
1518	—1457	1582	—1738	1637	—4435	1697	—1964	1758	—2191
1519	—1458	1583	—1739	1638	—4571	1698	—1963	1759	—2191
1520	— 604	1584	—1740	1639	—1803	1699	—7545	1760	—2194
1524	— 621	1585	—2349	1640	—1804	1700	—7546	1761	—2193
1525	— 448	1586	—2349	1641	—1805	1701	—7553	1762	—2151
1526	— 659	1587	—1741	1642	—1806	1702	—7552	1763	—2151
1527	—1459	1588	—1742	1643	—1807	1703	—7547	1764	—2151
1528	—1460	1589	—1743	1644	—1808	1704	—7548	1765	—2152
1529	— 921	1590	—1744	1645	—1821	1705	—7550	1766	—2150
1530	— 478	1591	—1745	1646	—1813	1706	—7551	1767	—2155
1531	— 478	1592	—1747	1647	—1820	1707	—7555	1768	—2155
1532	—1403	1593	—1747	1648	—1819	1708	—7556	1769	—2155

TABLE OF COMPARATIVE SECTIONS

Rev.	C. S.	Rev.	C. S.	Rev.	C. S.	Rev.	C. S.	Rev.	C. S.
1770	—2153	1833	—2214	1895	—2290	1956	—2310	2016	—2434
1771	—2154	1834	—2218	1896	—2291	1957	—2312	2017	—2435
1772	—2156	1835	—2219	1897	—2292	1958	—2313	2018	—2444
1773	—2157	1836	—2220	1898	—2293	1959	—2314	2019	—2437
1774	—2158	1837	—2221	1899	—2295		2315	2020	—2438
1775	—2159	1838	—2222	1900	—2296	1960	—2316	2021	—2439
1776	—2160	1839	—2223	1901	—2297	1961	—2317		2440
1777	—2161	1840	—2224	1902	—2298	1962	—2318	2022	—2441
1778	—2162	1841	—2225	1903	—2299	1963	—2319	2023	—2442
1779	—2163	1842	—2226	1904	—2300	1964	—2331	2024	—2467
1780	—2164	1843	—2231	1905	—2301	1965	—2332	2025	—2468
1781	—2165	1844	—2232	1906	—2302	1966	—2324	2026	—2469
1782	—2165	1845	—2233	1907	—2303	1967	—2321	2027	—2474
1783	—2166	1846	—2234	1908	—2304	1968	—2322	2028	—2470
1784	—2167	1847	—2235	1909	—2249	1969	—2333	2029	—2477
1785	—2168	1848	—2236	1910	—2250	1970	—2335	2030	—2478
1786	—2169	1849	—2237	1911	—2251	1971	—2336	2031	—2475
1787	—2170	1850	—2238	1912	—2252	1972	—2337	2032	—2476
1788	—2171	1851	—2239	1913	—2254	1973	—2338	2033	—2479
1789	—2172	1852	—2240	1914	—2253	1974	—2339	2034	—2472
1790	—2174	1853	—2241	1915	—1632	1975	—2340	2035	—2471
1791	—2175	1854	—2242	1916	—1633	1976	—2320	2036	—2473
1792	—4018	1855	—2243	1917	—1634	1977	—2323	2037	—2461
1793	—4019	1856	—2243	1918	—1635	1978	—2327	2038	—2462
1794	—2176	1857	—2244	1918a	—1631	1979	—2328	2039	—2463
1795	—2177	1858	—2245	1919	—1636	1980	—2329	2040	—2446
1796	—2178	1859	—2246	1920	—1637	1981	—2330	2041	—2447
1797	—2179	1860	—2247	1921	—1638	1982	—2341	2042	—2448
1798	—2180	1861	—2248	1922	—1639	1983	—2343	2043	—2449
1799	—2181	1862	—2087	1923	—1640	1984	—2355	2044	—2450
1800	—2182	1863	—2089	1924	—1641	1985	—2350	2045	—2451
1801	—2182	1864	—2088	1925	—1642	1986	—2345	2046	—2452
1802	—2183	1865	—2097	1926	—1643	1987	—2346	2047	—2453
1803	—2184	1866	—2104	1927	—1644	1988	—2347	2048	—2454
1804	—2185	1867	—2090	1928	—1645	1989	—2349	2049	—2455
1805	—2186	1868	—2091	1929	—1646	1990	—2348	2050	—2457
1806	—2187		2096	1930	—1621	1991	—2351	2051	—2458
1807	—2188	1869	—2096	1931	—1622	1992	—2353	2052	—2480
1808	—2189	1870	—2096	1932	—1623	1993	—2356	2053	—2481
1809	—2190	1871	—2094	1933	—1624	1994	—2357	2054	—2488
1810	—2197	1872	—2092	1934	—1625	1995	—2358		2489
1811	—2198	1873	—2095	1935	—1647	1996	—2359	2055	—2490
1812	—2199	1874	—2093	1936	—1648	1997	—2360	2056	—2491
1813	—2200	1875	—2101	1937	—1649	1998	—2361	2057	—2492
1814	—2201	1876	—2103	1938	—1650	1999	—2363	2060	—3408
1815	—2202	1877	—2139	1939	—1012	2000	—2364	2080	—3369
1816	—2195	1878	—2139	1940	—1651	2001	—2365	2081	—2493
1817	—2196	1879	—2139	1941	—1652		2366	2081a	—2493
1818	—2196	1880	—2139	1942	—1653	2002	—2367	2082	—2494
1819	—2203	1881	—2109	1943	—1626	2003	—2368	2083	—2495
1820	—2204	1882	—2114	1944	—1627	2004	—2369	2084	—2496
1821	—2205	1883	—2111	1945	—1628	2005	—2370	2085	—2497
1822	—2206	1884	—2116	1946	—1628	2006	—2371	2086	—2498
1823	—2207	1885	—2117	1947	—1628	2007	—2372	2087	—2499
1824	—2208	1886	—2118	1948	—1629	2008	—2373	2088	—2500
1825	—2209	1887	—2119	1949	—1630	2009	—2374	2089	—2502
1826	—2210	1888	—2120	1950	—2305	2010	—2375	2090	—2503
1827	—2211	1889	—2121	1951	—2306	2011	—2376	2091	—2504
1828	—2212	1890	—2285	1952	—2307	2012	—2429	2092	—2505
1829	—2213	1891	—2286		2998	2013	—2430	2093	—2506
1830	—2215	1892	—2284	1953	—2308	2014	—2431	2094	—2507
1831	—2216	1893	—2287	1954	—2309	2015	—2432	2095	—2508
1832	—2217	1894	—2289	1955	—2311	2016	—2433	2096	—2509

APPENDIX VI

Rev.	C. S.	Rev.	C. S.	Rev.	C. S.	Rev.	C. S.	Rev.	C. S.
2097	—2510	2157	—2988	2220	—3052	2283	—3115	2346	—2986
2098	—2511	2158	—2989	2221	—3053	2284	—3116	2347	—3172
2099	—2512	2159	—2990	2222	—3054	2285	—3117	2348	—3173
2100	—2514	2160	—2991	2223	—3055	2286	—3118	2349	—3174
2101	—2517	2161	—2992	2224	—3056	2287	—3119	2350	—3175
2102	—2519	2162	—2993	2225	—3057	2288	—3120	2351	—3176
2103	—2520	2163	—2994	2226	—3058	2289	—3121	2351a	—3178
2104	—2521	2164	—2995	2227	—3059	2290	—3122	2352	—3179
2105	—2518	2165	—2996	2228	—3060	2291	—3123	2353	—3188
2106	—2517	2166	—2997	2229	—3061	2292	—3124	2354	—3189
2107	—2515	2167	—2999	2230	—3062	2293	—3125	2355	—3190
2108	—2516	2168	—3000	2231	—3063	2294	—3126	2356	—3191
2109	—2522	2169	—3001	2232	—3064	2295	—3127	2357	—3193
2110	—2523	2170	—3002	2233	—3065	2296	—3128	2358	—3194
2111	—2524	2171	—3003	2234	—3066	2297	—3129	2359	—3195
2112	—2525	2172	—3004	2235	—3067	2298	—3130	2360	—3199
2113	—2526	2173	—3005	2236	—3068	2299	—3131	2361	—1386
2114	—2527	2174	—3006	2237	—3069	2300	—3132		3197
2115	—2528	2175	—3007	2238	—3070	2301	—3133	2362	—3196
2116	—2529	2176	—3008	2239	—3071	2302	—3134	2363	—3198
2117	—2530	2177	—3009	2240	—3072	2303	—3135	2364	—3200
2118	—3292	2178	—3010	2241	—3073	2304	—3136	2365	—3201
2119	—2531	2179	—3011	2242	—3074	2305	—3137	2366	—3202
2120	—2532	2180	—3012	2243	—3075	2306	—3138	2367	—3203
2121	—2533	2181	—3013	2244	—3076	2307	—3139	2368	—3204
2122	—2535	2182	—3014	2245	—3077	2309	—3141		3205
2123	—2536	2183	—3015	2246	—3078	2310	—3142	2369	—1957
2124	—2537	2184	—3016	2247	—3079	2311	—3143	2370	—1958
2125	—2538	2185	—3017	2248	—3080	2312	—3144	2371	—1902
2126	—2539	2186	—3018	2249	—3081	2313	—3145	2380	—1919
2127	—2540	2187	—3019	2250	—3082	2314	—3146	2381	—7657
2128	—2541	2188	—3020	2251	—3083	2315	—3147	2383	—1920
2129	—2542	2189	—3021	2252	—3084	2316	—3148		1947
2130	—2543	2190	—3022	2253	—3085	2317	—3149	2384	—1940
2131	—2544	2191	—3023	2254	—3086	2318	—3150	2385	—1926
2132	—2545	2192	—3024	2255	—3087	2319	—3151	2386	—1934
2133	—2546	2193	—3025	2256	—3088	2320	—3152	2387	—1936
2134	—2547	2194	—3026	2257	—3089	2321	—3153	2388	—1938
2135	—2548	2195	—3027	2258	—3090	2322	—3154	2389	—1937
2136	—2549	2196	—3028	2259	—3091	2323	—3155	2390	—1933
2137	—2550	2197	—3029	2260	—3092	2324	—3156	2391	—1925
2138	—2551	2198	—3030	2261	—3093	2325	—3157		1926
2139	—2552	2199	—3031	2262	—3094	2326	—3158		1927
2140	—2553	2200	—3032	2263	—3095	2327	—3159		1952
2141	—2555	2201	—3033	2264	—3096	2328	—3160	2392	—1943
2142	—2556	2202	—3034	2265	—3097	2329	—3161	2394	—1941
2143	—2557	2203	—3035	2266	—3098	2330	—3162	2395	—1935
2144	—2557	2204	—3036	2267	—3099	2331	—3163	2396	—1921
2145	—2558	2205	—3037	2268	—3100	2332	—3164	2397	—1926
2146	—2970	2206	—3038	2269	—3101	2333	—3165	2399	—1924
2147	—2971	2207	—3039	2270	—3102	2334	—3166	2400	—1939
	2972	2208	—3040	2271	—3103	2335	—3167	2401	—1945
	2975	2209	—3041	2272	—3104	2336	—3168	2402	—1946
2148	—2973	2210	—3042	2273	—3105	2337	—3169	2408	—1915
2149	—2974	2211	—3043	2274	—3106	2338	—3170	2409	—1913
	2975	2212	—3044	2275	—3107	2339	—3171		1914
2150	—2974	2213	—3045	2276	—3108	2340	—2976	2411	—1917
2151	—2982	2214	—3046	2277	—3109	2341	—2998	2412	—1918
2152	—2983	2215	—3047	2278	—3110	2342	—2977	2413	—1925
2153	—2984	2216	—3048	2279	—3111	2343	—2978	2415	—1928
2154	—2986	2217	—3049	2280	—3112	2344	—2979		1929
2155	—2987	2218	—3050	2281	—3113	2345	—2981	2416	—1931
2156	—2985	2219	—3051	2282	—3114	2346	—2983	2417	—1922

TABLE OF COMPARATIVE SECTIONS

Rev.	C. S.	Rev.	C. S.	Rev.	C. S.	Rev.	C. S.	Rev.	C. S.
2417	—1923	2487	—3215	2541	—3280	2597	—1733	2652	—3544
2418	—1921		3219	2542	—3281	2598	—3413	2653	—3548
2420	—1942	2488	—3216	2543	—3282	2599	—3471	2654	—3549
2421	—1932	2489	—3217	2544	—3283	2600	—3472	2655	—3551
2423	—1948	2490	—3218	2545	—3284	2601	—3454	2656	—3552
	1951	2491	—3222		3287	2602	—3473	2657	—3554
2424	—1986		3225	2546	—3285	2603	—3474	2658	—3553
2425	—2061	2492	—3220	2547	—3286	2604	—3414	2659	—3555
2426	—1952	2493	—3229	2548	—3420	2604a	—3483	2660	—3556
2427	—2012	2494	—3228	2549	—3421	2605	—3484	2661	—3557
2428	—2011		3230	2550	—3422	2606	—3484	2662	—3558
2429	—2013	2495	—3231	2551	—3423	2607	—3485	2663	—3559
2430	—2049	2496	—3223	2552	—3428	2608	—3486	2664	—3560
2431	—2050	2497	—3224		3462	2609	—3487	2665	—3561
2432	—2051	2498	—3221	2553	—3429	2610	—3488	2666	—3562
2433	—1988	2499	—3246	2554	—3424	2611	—3475	2667	—3563
2434	—2037	2500	—3247	2555	—3425	2612	—3476	2668	—3564
2435	—2036	2501	—3248	2556	—3426	2613	—3480	2669	—3566
2436	—2040		3249	2557	—3427	2614	—3481	2670	—3568
2437	—2042		3250	2558	—3431	2615	—3541		3569
2438	—1967	2502	—3251	2559	—3432	2616	—3542	2671	—3568
2439	—1981	2503	—3252	2560	—3433	2617	—3446		3569
2440	—1979	2504	—3253	2561	—3434	2619	—3494	2672	—3570
2441	—2014	2505	—3254	2562	—3435	2620	—3495	2673	—3571
2442	—2071		3256	2563	—3458	2621	—3496	2674	—3572
2443	—2003	2506	—3227	2564	—3456	2622	—3497	2674a	—6536
2444	—1969	2507	—3237	2565	—3463	2622a	—3536	2675	—385
2445	—2017	2508	—3234	2566	—3412	2622b	—3537	2676	—386
2446	—1980	2509	—3235	2567	—3444	2622c	—3539	2677	—387
2447	—2076	2510	—3236		3445	2622d	—3540	2678	—388
2448	—1978	2511	—3225		3461	2622e	—3536	2679	—389
2449	—2076	2512	—3233	2568	—3448	2622f	—3538	2680	—390
2450	—1977		3241	2569	—3449	2623	—3510	2681	—3750
2451	—1984	2513	—3242	2570	—3451	2624	—3523	2682	—3779
2452	—2067		3243	2571	—3452	2625	—3504	2683	—3761
2453	—2010	2514	—3240	2572	—3453	2626	—3504	2684	—3762
2454	—2008	2515	—3244	2573	—3455	2626a	—4457	2685	—3763
2455	—2020	2516	—3245	2574	—3459	2627	—3503	2686	—3836
2457	—1974	2517	—3226	2575	—1706	2628	—3509	2687	—3838
2459	—1887	2518	—3238		1707	2629	—3507	2688	—3838
	1891	2519	—3255		3444	2629a	—3511	2689	—3838
2460	—1964		3256	2575a	—1708	2630	—3513	2690	—3764
2462	—1975	2520	—3257	2576	—1712	2631	—3515	2691	—3820
2463	—1976	2521	—3258	2577	—1713	2632	—3516	2692	—3765
2464	—1976	2522	—3259	2578	—1714	2633	—3518	2693	—3766
2465	—1972	2523	—3260	2579	—1715	2635	—3525	2694	—3837
2466	—1897	2524	—3261	2580	—1716	2636	—3526	2695	—3785
	1898	2525	—3262	2581	—1717	2637	—3532	2696	—3771
2467	—1965	2526	—3263	2582	—1718	2638	—3533	2697	—3790
2468	—1997	2527	—3264	2583	—1719	2639	—3534		3795
2469	—2001	2528	—3265	2584	—1720	2640	—3447	2698	—3798
2470	—2000	2529	—3266	2585	—1721	2641	—3521	2699	—3799
	2022	2530	—3267	2586	—1722	2642	—3514	2700	—3797
2471	—1993	2531	—3268	2587	—1723	2643	—3514	2701	—3800
2472	—2023	2532	—3269	2588	—1724	2644	—3514	2702	—3802
2474	—2009	2533	—3270	2589	—1725	2645	—3482	2703	—3796
2476	—2044	2534	—3271	2590	—1726	2646	—3465	2704	—3803
2478	—1971	2535	—3272	2591	—1727	2646a	—5091	2705	—3801
2481	—2033	2536	—3273	2592	—1728	2647	—3415	2706	—3819
2483	—1998	2537	—3274	2593	—1729	2648	—3430	2707	—3821
2484	—2053	2538	—3275	2594	—1730	2649	—3550	2708	—3822
2485	—3213	2539	—3276	2595	—1731	2650	—3543	2709	—3823
2486	—3214	2540	—3279	2596	—1732	2651	—3546		3824

APPENDIX VI

Rev.	C. S.	Rev.	C. S.	Rev.	C. S.	Rev.	C. S.	Rev.	C. S.
2710	—3825	2773	—3903	2831	—3949	2893	—8018	2954	—2662
2711	—3786		3904	2832	—3950	2894	—8019	2955	—2659
2712	—3752	2774	— 947	2833	—3951	2895	—8020	2956	—2660
2713	—3755	2775	—3905	2834	—3952	2896	—8021	2957	—2668
2714	—3754	2776	—3906	2835	—3953	2897	—8022	2958	—2661
2715	—3753		3907	2836	—3955	2898	—8023	2959	—2663
2716	—3757	2777	—3908	2837	—3958	2899	—8024	2960	—2664
2717	—3758		3909	2838	—3959	2900	—8025	2961	—2665
2718	—3809	2778	—3910	2839	—2980	2901	—8026	2962	—2666
2719	—3817	2779	—3916		3960	2902	—8027	2963	—2667
2720	—3810	2780	—3914	2840	—3961	2903	—8028	2964	—2669
2721	—3808	2781	—3915	2841	—3962	2904	—8029	2965	—2670
2722	—3781	2782	—3911	2842	—3963	2905	—8030	2966	—2671
2723	—3783	2783	—3913	2843	—3964	2906	—8031	2967	—2672
2725	—3806	2784	—3917	2844	—3965	2907	—8032	2968	—2678
2726	—3807	2785	—3918	2845	—3966	2908	—8033	2969	—2680
2727	—3792	2786	—3912	2846	—3967	2909	—8034	2970	—2681
2728	—3818	2787	—3922	2847	—3969	2910	—8035	2971	—2683
2729	—3852	2788	—3923	2848	—3968	2911	—8036	2972	—2684
2730	—3853	2789	—1233	2849	—7972	2912	—8037	2973	—2686
2731	—3854	2790	—3894	2850	—7973	2913	—8038	2974	—2691
2732	—3855	2791	—3895	2851	—7974	2914	—8039	2975	—2692
2733	—3866	2792	—3896	2852	—7994	2915	—2622	2976	—2682
2734	—3856	2793	—3897	2853	—7977	2916	—2623	2977	—2693
2735	—3848	2794	—3898	2854	—7976	2917	—2624	2978	—2688
2735a	—3850	2795	—3899	2855	—7979		2626	2979	—2689
2735b	—3850	2796	—3924	2856	—7991	2918	—2625	2980	—2690
2736	—3858	2797	—3902	2857	—7980	2919	—2626	2981	—2738
2737	—3859	2797a	—3900	2858	—7981	2920	—2628		2739
2738	—3860		3901	2859	—7982	2921	—2629	2982	—2741
2739	—3868	2798	—3892	2860	—7983	2922	—2627	2983	—2744
2740	—3857	2799	—3919	2861	—7984	2923	—2673	2984	—2745
2741	—3863	2800	—3178	2862	—7985	2924	—2677	2985	—2746
2742	—3864	2801	—3920	2863	—7986	2924a	—2679	2986	—2748
2753	—3865	2802	—3921	2864	—7987	2925	—2630	2987	—2749
2744	—3867	2803	—3893	2865	—7989	2926	—2641	2988	—2750
2745	—3869	2804	—3849	2866	—7990	2927	—2642	2989	—2751
2746	—3870	2805	—3851	2867	—7992	2928	—2674	2990	—2752
2747	—3871	2806	—3880	2868	—7993	2929	—2676	2991	—2753
2748	—3876	2807	—5005	2869	—7998	2930	—2675	2992	—2754
2749	—3872	2808	—3925	2870	—7996	2931	—2631	2993	—2755
2750	—3877	2809	—3926	2871	—7999	2932	—2632	2994	—2756
2753	—3873	2810	—3927	2872	—8000	2933	—2633	2995	—2757
2754	—3875	2811	—3928	2873	—8001	2934	—2634	2996	—2758
2755	— 252		3929	2874	—8001	2935	—2635	2997	—2759
2756	—3874	2812	—3931	2875	—8002	2936	—2637	2998	—2760
2757	—6120	2813	—3932	2876	—7869	2937	—2636	2999	—2761
2758	—6540	2814	—3933	2877	—7869	2938	—2638	3000	—2762
2759	—3879	2815	—3934	2878	—7870	2939	—2639	3001	—2763
2760	—5922	2816	—3935	2879	—8003	2940	—2640	3002	—2764
2761	—3878	2817	—3936	2880	—8004	2941	—2646	3003	—2765
2762	—3881	2818	—3937	2881	—8005	2942	—2647	3004	—2766
2763	—3882	2819	—3938	2882	—7996	2943	—2648	3005	—2767
2764	—3883	2820	—3939	2883	—8009	2944	—2649	3006	—2768
2765	—3884	2821	—3940	2884	—8006	2945	—2650	3007	—2769
2766	—3885	2822	—4394	2885	—8007	2946	—2651	3008	—2770
2767	—3890	2823	—3943	2886	—8008	2947	—2652	3009	—2771
2768	—3891	2824	—3944	2887	—8010	2948	—2653	3010	—2773
2769	—3886	2825	—3945	2888	—8012	2949	—2654	3011	—2776
2770	—3888	2826	—3942	2889	—8013	2950	—2655	3012	—3971
2771	—3889	2828	—3946	2890	—8014	2951	—2656	3013	—3972
2771a	—3887	2829	—3947	2891	—8015	2952	—2657	3014	—3973
2772	—3847	2830	—3948	2892	—8017	2953	—2658	3015	—3974

TABLE OF COMPARATIVE SECTIONS

Rev.	C. S.	Rev.	C. S.	Rev.	C. S.	Rev.	C. S.	Rev.	C. S.
3016	—3975	3070	—8067	3128	—4146	3189	—4556	3251	—4619
3017	—3976	3071	—8068	3129	—4147	3190	—4557	3252	—4620
3018	—3977	3072	—8069	3130	—4148	3191	—4558	3253	—4621
3019	—3978		8070	3131	—4149	3192	—4559	3253a	—6683
3020	—3979		8073	3132	—4152	3193	—4560	3254	—4623
3021	—3980	3073	—8071	3133	—4153	3194	—4561	3255	—4625
3022	—3981		8073	3134	—4154	3195	—4562	3255a	—4610
3023	—3985	3074	—8072	3134a	—4155	3196	—4563	3256	—4626
3024	—3986		8073	3135	—4158	3197	—4564	3257	—4627
3025	—3987	3075	—8074	3136	—4159	3198	—4565	3258	—4628
3026	—3988	3076	—8076	3137	—4161	3199	—4566	3259	—4629
3027	—3989		8077	3138	—4162	3200	—4570	3260	—4630
3027a	—3994	3077	—8078	3139	—4163	3201	—4571	3261	—4631
3027b	—3995	3078	—8079	3140	—4164	3202	—4567	3262	—4632
3027c	—3996	3079	—8080	3141	—4165	3203	—4568	3263	—4633
	3997	3080	—4096	3142	—4166	3204	—4569	3264	—4634
3027d	—3998	3081	—4097	3143	—4167	3205	—4572	3265	—4635
3027e	—3999	3082	—4098	3144	—4168	3206	—4573	3266	—4637
3027f	—4000	3083	—4099	3145	—4169	3207	—4577	3267	—4638
3027g	—4001	3084	—4100	3146	—4170	3208	—4579	3268	—4639
3027h	—4002	3085	—4101	3146a	— 51	3209	—4574	3269	—4640
3027i	—4003	3086	—4102	3147	—4512	3210	—4575	3270	—4641
3028	—4017	3087	—4104	3148	—4513	3211	—4576	3271	—4642
3029	—5118	3088	—4105	3149	—4514	3212	—4578	3272	—4644
3030	—5119	3089	—4106	3150	—4515	3213	—4581	3272a	—4636
3031	—5120	3090	—4107	3151	—4517	3214	—4582	3273	—4645
3032	—4045	3091	—4108	3152	—4518	3215	—4583	3274	—4647
	4046	3092	—4109	3153	—4519	3216	—4584	3275	—4648
	5121	3093	—4110	3154	—4520	3217	—4585	3276	—4649
3033	—4081	3094	—4111	3155	—4521	3218	—4586	3277	—4650
3034	—4063	3095	—4112	3156	—4522	3219	—4587	3278	—4651
3035	—5122	3096	—4113	3157	—4523	3220	—4588	3279	—4652
3036	—4073	3097	—4114	3158	—4524	3221	—4589	3280	—4653
3037	—4073	3098	—4115	3159	—4525	3222	—4590	3281	—4654
3038	—4073	3099	—4116	3160	—4526	3223	—4591	3282	—4655
3039	—4074	3100	—4117	3161	—4527	3224	—4592	3283	—4656
3040	—4074	3101	—4118	3162	—4528	3225	—4593	3284	—4185
3041	—4075	3102	—4119	3163	—4529	3226	—4594	3285	—4185
3042	—5124	3103	—4120	3164	—4530	3227	—4595	3286	—4186
3043	—5125	3104	—4121	3165	—4531	3228	—4580	3287	—4175
3044	—5126	3105	—4122	3166	—4532	3229	—4596	3288	—4189
3045	—7121	3106	—4123	3167	—4533	3230	—4597		5974
3046	—7121	3107	—4124	3168	—4540	3231	—4598	3289	—4177
3049	—7123	3108	—4125	3169	—4534	3232	—4599	3290	—4176
3050	—7122	3109	—4126	3170	—4535	3233	—4600	3291	—4171
3051	—7125	3110	—4127	3171	—4536	3234	—4601	3292	—4172
3052	—7127	3111	—4128	3172	—4537	3235	—4602	3293	—4173
3053	—7126	3112	—4129	3173	—4539	3236	—4603	3294	—4688
3057	—7056	3113	—4131	3174	—4538	3237	—4604	3295	—4487
	7057	3114	—4132	3175	—4541	3238	—4605	3296	—4489
	7058	3115	—4133	3176	—4542	3239	—4606	3297	—4490
	7059	3116	—4134	3177	—4543	3240	—4607	3298	—4488
3058	—7116	3117	—4135	3178	—4544	3241	—4608	3299	—4483
3060	—7119	3118	—4136	3179	—4545	3242	—4611	3300	—4484
3061	—7523	3119	—4137	3180	—4546	3243	—4612	3301	—4485
3062	—7522	3120	—4138	3181	—4547	3244	—4613	3302	—4486
3063	—8061	3121	—4160	3182	—4548	3245	—4614	3303	—1670
3064	—8063	3122	—4139	3183	—4549	3246	—4615	3304	—1671
3065	—8062	3123	—4140	3184	—4550	3247	—4615	3305	—1672
3066	—8060	3124	—4141	3185	—4551	3248	—4616	3306	—3954
3067	—8064	3125	—4142	3186	—4552	3248a	—3411	3307	—4279
3068	—8065	3126	—4143	3187	—4553	3249	—4617	3308	—4280
3069	—8066	3127	—4144	3188	—4554	3250	—4618	3309	—1852

APPENDIX VI

Rev.	C. S.	Rev.	C. S.	Rev.	C. S.	Rev.	C. S.	Rev.	C. S.
3310	—1853	3376	—5282	3434a	—4284	3498	—4254	3569	—4373
3311	—1854	3377	—5291	3435	—4287	3499	—4253	3570	—4374
3312	—1863	3378	—5382	3436	—4288	3500	—4249	3571	—4382
3313	—4334	3379	—5290	3437	—4178	3501	—4263	3572	—4388
3314	—4494	3380	—6925	3438	—4179	3502	—4258	3573	—1301
3315	—4493	3381	—2554	3439	—4180		4510	3574	—1319
3316	—4265	3382	—5283	3442	—4465	3503	—4257	3575	—4389
3317	—4495	3382a	—7378	3444	—4752	3504	—4264	3576	—4385
3318	—4496		7379	3445	—4766	3505	—4260	3577	—4393
3319	—1849	3383	—7371	3446	—7072	3506	—4251	3578	—4399
3321	—1856	3384	—4185	3447	—4766	3507	—4250	3579	—4398
3322	—1857	3385	—4185	3448	—7151	3508	—4255	3580	—5072
3323	—4356	3386	—4186		7155	3509	—4261	3581	—2227
3324	—4387	3387	—4185	3449	—7155	3510	—4256	3582	—2229
3325	—4401	3388	—4189	3450	—7234	3511	—4259	3583	—2230
3326	—4402		5974	3451	—7241	3512	—4451	3584	— 749
3327	—5199	3389	—4188	3452	—4765	3513	—4452	3585	— 750
3328	—5202	3390	—4190	3453	—7066	3517	—4508	3586	— 750
3329	—5191	3391	—4193	3454	—7159	3518a	—3410	3587	—3942
3330	—4233	3392	—4191	3455	—7164	3522	—4453	3588	—1234
3331	—4232	3393	—4194	3456	—7128	3524	—4456	3589	—1469
3332	—4234	3394	—4192	3457	—7124	3525	—4456	3590	—1302
3333	—4235	3395	—4186	3458	—7526	3526	—3371	3591	—6187
3334	—4236	3396	—4185	3459	—2122		3400	3592	—4384
3335	—4238	3397	—4195	3460	—2134	3527a	—3370	3593	—5165
3336	—4246	3398	—4196	3462	—2125	3528	—4454	3594	—7768
3337	—4241	3399	—4185	3463	—2136	3533	—3398	3595	—6545
3338	—4242	3400	—4197	3464	—2105		3399	3596	—4409
3339	—4313	3401	—4186	3465	—2141		3407	3597	—2228
3340	—4245	3402	—4198	3466	—2102	3534	—3371	3598	—4395
3341	—4244	3403	—4272	3467	—2126	3536	—6881	3599	—3567
3342	—4248	3404	—4273	3468	—2133	3537	—6882	3600	—3561
3343	—4247	3405	—4275	3469	—2098	3538	—6894	3601	— 886
3344	—4239	3406	—4268	3470	—2108	3539	—6895	3602	—2340
3345	—4240	3407	—4269	3471	—2107	3540	—6885	3603	—1354
3346	—4309	3408	—4270	3472	—2130	3541	—6883	3604	—4396
3347	—4311	3409	—4271	3473	—2137	3542	—6884	3605	—4386
3348	—4209	3410	—4276	3474	—2138	3543	—4304	3606	—7691
3349	—4336	3411	—1862	3475	—2139	3544	—4333	3607	—2742
3350	—4343	3412	—1840	3476	—2139	3545	—6998	3608	—2747
3351	—4337	3413	—1831	3477	—2135	3546	—6999	3609	—2685
3352	—4338	3414	—1973	3478	—2140	3547	—6966	3610	—2743
3353	—4353	3415	—1973	3479	—2124	3548	—8095	3611	—4366
3353a	—4347	3416	—1996	3480	—2127	3549	—6964	3612	—4367
3354	—4339	3417	—1968	3481	—2128	3550	—6984	3613	—2456
3355	—4447	3418	—2078	3482	—6309	3551	—6983	3614	—1651
3356	—4448	3419	—4293	3483	—6426	3552	—6965	3615	—4364
3357	—4450	3420	—4299	3484	—6305	3553	—6982	3616	—4365
3358	—4223	3421	—4298	3485	—6306	3554	—6963	3617	—1617
3359	—4224	3422	—4181	3486	—6304	3555	—4471	3618	—4226
3360	—4225	3423	—4182	3487	—4369	3556	—4472	3619	—4227
3361	—4342	3424	—4296		6307	3557	—4473	3620	—4215
3365	—4469	3425	—4295	3488	—6308	3558	—4474	3621	—4213
3366	—4480	3426	—4297	3489	—4274	3559	—7377	3622	—4216
3367	—4481	3427	—4294	3490	—6310	3560	—6981	3623	—4228
3368	—4444	3428	—4291	3491	—6432	3561	—7376	3624	—4207
3369	—4340	3428a	—4446	3492	—6293	3562	—8097	3625	—4208
3370	—4341	3429	—4289	3493	—4368	3563	—8098	3626	—4211
3371	—2501	3430	—4421		6281	3564	—8099	3627	—4210
3372	—2499	3431	—4281	3494	—6286	3565	—4383	3628	—4411
3373	— 191	3432	—4277	3495	—6423	3566	—5013	3629	—4203
3374	—4470	3433	—4278	3496	—6352	3567	—6790	3630	—4222
3375	—5278	3434	—4282	3497	—6463	3568	—4372	3631	—4200

TABLE OF COMPARATIVE SECTIONS

Rev.	C. S.	Rev.	C. S.	Rev.	C. S.	Rev.	C. S.	Rev.	C. S.
3632	—4201	3690	—1205	3749	—3416	3805	—4439	3852e	—4001
3633	—4202	3691	—1091	3749a	—3484	3806a	—6683		4003
3634	—4221	3692	—4381	3750	—3419	3806b	—6683	3853	—3991
3635	—4229	3693	—6552	3751	—3418	3807	—4731	3854	—3990
3636	—4212	3694	—6171	3752	—3505	3808	—4734	3855	—3992
3637	—4204	3695	—6164	3752a	—3511	3809	—4468	3856	—3993
3638	—4205	3696	—4380	3752b	—3512	3811	—5097	3857	—7124
3639	—4206	3697	—4375	3753	—3454	3812	—5083	3858	—7125
3640	—4230	3698	—4376	3754	—4417	3813	—4467	3859	—7123
3641	— 198	3699	—4377	3755	—4418	3814	—4709	3860	—7127
3642	—6632	3700	—4378	3756	—3478	3815	—5086	3863	—4936
	6647	3701	—4379	3757	—3504	3816	—5085	3864	—4937
3643	—6648	3702	—4174	3757a	—4457	3817	—4425	3865	—4938
3644	—6782	3703	—4416	3757b	—4350	3818	—4696	3866	—4939
3645	—6622	3704	—4413	3757c	—3536	3819	—4699	3867	—4940
3646	—6623	3705	—4355	3757d	—3537	3820	—4703	3868	—4941
3647	—6624	3706	—4415	3758	—4420	3821	—4691	3869	—4941
3647a	—6683	3707	—4412	3759	—4332		4768		4942
3648	—6665	3708	—4410	3760	—4400	3822	—4703	3870	—4943
3649	—6668	3709	—4503	3761	—3506	3822a	—4900	3871	—4944
3650	—6669	3710	—4504	3761a	—3491	3823	—2147	3872	—4949
3651	—6653	3711	—4183	3761b	—3492	3824	—2147	3873	—4945
3652	—6664	3712	—4184	3762	—3520	3825	—2148	3874	—4946
3653	—6662	3712a	—4509	3763	—4419	3826	—2149	3875	—4947
3654	—6670	3713	—4900	3764	—4466	3827	—4736	3876	—4948
3655	—6671	3714	—4510	3765	—4266	3828	—5088	3877	—5170
3656	—6738	3715	—4430	3765a	—4237	3829a	—5091	3878	—5171
3657	—4404	3716	—4431	3766	—4267	3830	—5089	3879	—5172
3658	—4403	3717	—4432	3767	—3413	3831	—5123	3880	—5173
3659	—4405	3718	—4433	3768	—3519	3832	—4440	3881	—5169
3660	—4408	3719	—4434	3769	—4422	3832a	—4012	3882	—5174
3660a	—7220	3720	—4435	3770	—3756	3832b	—4013	3883	—5175
3661	—4407	3721	—4435	3771	—4318	3832c	—4013	3884	—5180
3662	—4406	3722	—4436	3772	—3796	3832d	—4013	3885	—5181
3663	—2443	3723	—4437	3773	—3796	3832e	—4013	3886	—5179
3664	—2362	3724	—4688	3774	—3804	3832f	—4014	3887	—5176
3665	—2362		4897	3775	—3797	3832g	—4015	3888	—5178
3666	—4323	3725	—4427	3776	—4354	3832h	—4016	3889	—5177
3667	—4325	3726	—4428	3777	—3794	3833	—4390	3890	—5182
3668	—4335	3727	—4429	3778	—3793	3834	—5719	3891	—5183
	4958	3728	—4499	3779	—3811	3835	—4391	3892	—5184
3669	—4952	3729	—4442	3780	—3805	3836	—5746	3893	—5185
3670	—4300	3730	—4479	3781	—3787	3836c	—5766	3894	—5187
3671	—4324	3731	—4348	3782	—3782	3836d	—5770	3895	—5188
3672	—4322	3731a	—4349	3783	—3784	3838	—4414	3896	—5189
3673	—4317	3732	—5166	3784	—3789	3839	—5456	3897	—5190
3674	—4319	3733	—4458	3785	—3760	3840	—5419	3898	—5192
3675	—3528	3734	—4511	3786	—8005	3841	—1970	3899	—5193
3676	—4331	3735	—4461	3788	—4397	3842	—3956	3900	—5194
3677	—4301	3736	—4462	3790	—8016	3844	—3480	3901	—5199
3678	—4315	3737	—4463	3791	—2457	3845	—4330	3902	—5195
3679	—2534	3738	—4464	3792	—7885	3846	—4498	3903	—5196
3680	—4320	3740	—4459	3794	—4423	3847	—4326	3904	—5197
3681	—4321	3740a	—4659	3795	—4443	3848	—4497	3905	—5200
3682	—2354	3740b	—4660	3796	—4426	3849	—4329	3906	—5198
3683	—4314	3741	—7582	3797	—6909	3849a	—4328	3907	—5201
3684	—8075	3742	—4303	3798	—2772	3850	—3983	3908	—5203
3685	—4316	3743	—8081	3799	—2775	3851	—3984	3909	—7309
3686	—2352	3744	—7604	3800	—3541	3852	—3982		7310
3687	—4306	3745	—7045	3801	—3542	3852a	—3996	3910	—7311
3688	—4305	3746	—4302	3802	—2774	3852b	—3998	3911	—7312
3689	—1620	3747	—3476	3803	—5099	3852c	—3999	3913	—5004
3689a	—6537	3748	—3508	3804	—4438	3852d	—4000	3914	—5005

APPENDIX VI

Rev.	C. S.	Rev.	C. S.	Rev.	C. S.	Rev.	C. S.	Rev.	C. S.
3914	—5006	3981	—4898	4040	—7609	4113	—5511	4136	—5429
3915	—5006	3982	—4899	4041	—7610		5512	4137	—5431
3916	—5007	3982a	—4926	4042	—7611		5513	4138	—5426
3917	—5008		4927	4043	—7612		5514	4139	—5424
3918	—5009		4929	4044	—7613		5515		5437
3919	—5010		4930	4045	—7614		5516		5438
3920	—5011	3982b	—4928	4046	—7623		5517	4140	—5435
3922	—4033	3982c	—4929	4047	—7617		5518	4141	—5432
3923	—4034	3983	—5261	4048	—7618	4414	—5519		5434
3924	—4035	3984	—5262	4049	—7621		5520		5436
3925	—6932	3985	—5263	4050	—7622		5521		5441
3926	—6933	3985a	—5264	4051	—7619		5522	4142	—5439
3928	—6934	3986	—5265	4052	—7620	4115	—5526	4143	—5442
3930	—4666	3987	—5266	4053	—5671		5527		5443
3931	—4667	3988	—5267	4054	—5673		5528	4144	—5440
3932	—4668	3989	—5268	4055	—5674		5529	4145	—5457
3933	—4672	3990	—5269	4056	—5675		5530		5458
3934	—4673	3991	—5270	4057	—5691		5531		5460
3935	—4669	3992	—5271	4058	—5692		5532		5461
3936	—4670	3993	—5272	4059	—5692		5533		5462
3937	—4671	3994	—5273	4060	—5698		5534		5464
3937a	—4674	3995	—5274	4061	—5700		5535	4146	—5463
3938	—4675	3996	—5295	4062	—5701		5536	4147	—5464
3939	—4676	3997	—5296		5702	4118	—5501	4148	—5468
3940	—4677	3998	—5297	4063	—5693	4119	—5402		5740
3941	—4684	3999	—5298	4064	—5694		5404		5741
3942	—4686	4000	—5299	4065	—5695		5409		5742
3943	—4687	4001	—5300		5696	4120	—5406		5743
3944	—4688	4001a	—5310	4066	—5697	4121	—5402		5744
3945	—4690		5311	4067	—5699		5416		5745
3946	—4692	4002	—5302	4068	—5703		5417	4149	—5466
3947	—4693	4003	—5303	4069	—5704	4122	—5412		5467
3948	—4694	4004	—5304	4070	—5705	4123	—5412	4150	—5466
3949	—4695	4005	—5305	4071	—5706	4124	—5415	4151	—5610
3950	—4696	4006	—5306	4072	—5707		5670		5611
3951	—4697	4007	—5307	4073	—5708	4125	—5412		5612
3952	—4699	4008	—5301		5709		5417		5613
3953	—4700	4009	—5308	4074	—5710		5420		5614
3954	—4701	4010	—5309	4075	—5711	4126	—5414		5615
3955	—4702	4011	—5290	4076	—5712	4127	—5412		5616
3956	—4703	4012	—5291	4077	—5713		5418		5617
3957	—4704	4013	—5292	4078	—5714		5420	4152	—5444
	4705	4014	—5293	4079	—5715		5421		5445
3958	—4706	4015	—5294	4080	—5716	4128	—5418		5447
3959	—4707	4016	—5275	4081	—5717	4129	—5469	4153	—5446
3960	—4708	4017	—5276	4082	—5718		5470	4154	—5448
3961	—4713	4018	—5277	4083	—5720	4129	—5471	4155	—5450
3961a	—4714	4025	—5279	4084	—5721		5472	4156	—5450
3970a	—4759	4026	—5280	4085	—5537		5473	4157	—5449
3971	—4761	4027	—5281	4086	—5538		5474	4158	—5448
3972	—4764	4028	—5260	4087	—5541		5475		5451
3973	—4750	4029	—5383	4088	—5427		5476		5452
3974	—4765	4030	—5384		5459	4130	—5416	4159	—5454
3975	—4753	4031	—5386	4089	—5391		5423	4160	—5453
	4754	4032	—5387		5392	4131	—5416	4161	—5661
	4755	4033	—5385	4090	—5392	4132	—5422		5664
	4756	4034	—5388	4091	—5392	4133	—5410	4163	—5645
	4757		5390	4092	—5392	4134	—5411		5665
3976	—4750	4035	—5389	4093	—5480	4135	—5424		5668
3977	—4761	4036	—7605	4108	—5497		5425	4164	—5540
3977a	—4762	4037	—7606	4109	—5498		5428		5667
3977b	—4767	4038	—7607	4110	—5499		5430		5669
3980	—4897	4039	—7608	4111	—5500		5433	4165	—5667

TABLE OF COMPARATIVE SECTIONS

Rev.	C. S.	Rev.	C. S.	Rev.	C. S.	Rev.	C. S.	Rev.	C. S.
4166	—5666	4206a	—5767	4294	—5915	4356	—5992	4409	—6098
4167l	—5863	4217a	—5823	4295	—5916	4357	—5993	4410	—6099
4167m	—5863	4221	—5826	4296	—1383	4358	—5994	4412	—6100
4167n	—5864	4222	—5827		5917	4359	—5995	4413	—6101
	5867	4223	—5828	4297	—5918	4360	—5996	4414	—6102
4167p	—5865	4224	—5829	4298	—5919	4361	—5997	4415	—6103
4167q	—5866	4225	—5830	4299	—5920	4362	—5998	4416	—6104
	5871	4226	—5831	4300	—5921	4363	—5999	4417	—6105
4167r	—5863	4227	—5832	4301	—5922	4364	—6000	4418	—6106
4167s	—5868	4229	—5855	4302	—5923	4366	—6004	4419	—6107
4167v	—5552	4230	—5856	4303	—5924	4367	—6005	4420	—6113
4167w	—5553	4231	—5857	4304	—5925	4368	—6006	4421	—6112
4167x	—5554	4232	—5858	4305	—5926	4369	—6007	4422	—6108
4167y	—5555	4233	—5859	4306	—5927	4370	—6008	4423	—6109
4168	—5546	4234	—5861	4307	—5928	4371	—6009	4424	—6110
	5547	4236	—5843	4308	—5929	4372	—6010	4425	—6111
	6257	4237	—5845	4309	—5830	4373	—6011	4426	—6114
4169	—5548	4239	—5848	4310	—5931	4374	—6012	4427	—6115
	5549	4241	—5847	4311	—5932	4375	—6013	4428	—6116
4170	—5550	4248	—5842	4312	—5933	4376	—5977	4429	—6117
4171	—5551	4251	—5833	4313	—5934	4377	—6015	4430	—6118
4172	—5618	4252	—5834	4314	—5935	4378	—5943	4431	—6119
	5619	4253	—5835	4315	—5936	4379	—5944	4432	—6121
4173	—5620	4255	—5836	4316	—5937	4380	—5945	4433	—6122
4174	—5621	4256	—5837	4317	—5938	4381	—5978	4435	—7048
4175	—5622	4257	—5838	4318	—5939	4382	—6016	4436	—7049
4176	—5623	4259	—5781	4319	—5940	4383	—6017	4437	—7050
4177	—5624	4260	—5782	4320	—5941	4384	—6777	4437a	—7170
4178	—5626	4261	—5782	4321	—5942	4385	—6778		7171
	5628	4262	—5783	4322	—5946	4386	—6779	4438	—7051
4179	—5627	4263	—5788	4323	—5947	4387	—6780	4439	—7052
4180	—5850	4264	—5796	4324	—5948	4388	—6781	4440	—7053
4181	—5851	4265	—5797	4325	—5949	4389	—6783	4441	—7054
4182	—5852	4266	—5798	4326	—5950	4390	—6784	4442	—7055
	5853	4267	—5795	4327	—5951	4391	—6056	4444	—7064
4185	—5854	4268	—5789	4328	—5952	4392	—6057		7065
4187	—5872	4269	—5792	4329	—5953	4393	—6058		7067
4188	—5873	4270	—5790	4330	—5954	4394	—6059	4445	—7069
4189	—5874	4271	—5791	4331	—5955	4395	—6060	4446	—7067
4190	—5875	4272	—5791	4332	—5956	4396	—6061	4450	—7071
4190a	—5769	4273	—5794	4333	—5957	4397	—6062	4451	—7163
	5770	4274	—5799	4334	—5958	4397a	—6063	4454	—7076
	5771	4275	—5800	4335	—5959	4397b	—6064	4455	—7075
	5772	4276	—5793	4336	—5969	4397c	—6065	4456	—7157
4191	—5876	4277	—5801	4337	—5970	4397d	—6066	4458	—7251
4192	—5877	4278	—5802	4338	—5971	4397e	—6067	4459	—7158
4193	—5878	4279	—5803	4339	—5972	4397f	—6068		7161
4194	—5879	4280	—5804	4340	—5973		6069	4461	—7074
4195	—5880	4281	—5805	4341	—5975	4397g	—6070	4462	—7073
4196	—5881	4282	—5784	4342	—5976	4397h	—6071	4463	—6626
	5882	4283	—5785	4343	—5979	4397j	—6072	4464	—6628
4197	—5883	4284	—5786	4344	—5980	4397k	—6073	4465	—6629
4198	—5884	4285	—5787	4345	—5981	4398	—6087	4466	—6630
4199	—5885	4287	—6785	4346	—5982	4399	—6088	4467	—6632
4201	—5886	4288	—6786	4347	—5983	4400	—6089		6633
4202	—5888	4289	—6787	4348	—5984	4401	—6090	4468	—6631
4203	—5889	4290	—6788	4349	—5985	4402	—6091		6634
4204	—5892	4291	—6789	4350	—5986	4403	—6092		6637
4205	—5893	4291a	—1710	4351	—5987	4404	—6093	4469	—6636
4206	—5890	4291b	—1710	4352	—5988	4405	—6094	4470	—6631
	5891	4291c	—1710	4353	—5989	4406	—6095	4470a	—6639
4206a	—5765	4292	—5913	4354	—5990	4407	—6096	4470b	—6677
	5766	4293	—5914	4355	—5991	4408	—6097	4471	—6650

APPENDIX VI

Rev.	C. S.	Rev.	C. S.	Rev.	C. S.	Rev.	C. S.	Rev.	C. S.
4472	—6651	4521	—7249	4581	—6198	4659	—5076	4722	—6325
4473	—6652	4522	—7231	4582	—6204	4660	—5077	4723	—6326
4474	—6653	4523	—7233	4583	—6205	4661	—5093	4724	—6330
4475	—6654	4524	—7234	4584	—6210	4662	—5078	4725	—6331
4476	—6655	4525	—7235	4585	—6211	4663	—5079	4726	—6327
4477	—6656	4526	—7227	4586	—6197	4664	—5080	4727	—6328
4477a	—6683	4527	—7228	4587	—6187	4665	—5080	4728	—6329
4478	—6657	4528	—7230	4588	—6188	4666	—5094	4729	—6332
4479	—6658	4529	—7229	4589	—6196	4667	—5081	4730	—6333
4480	—6658	4530	—7223	4590	—6207	4668	—5095	4731	—6334
4481	—6659	4531	—7224	4591	—6208	4669	—5068	4732	—6335
4482	—6660	4532	—7225	4592	—6218	4671	—5071	4733	—6336
4483	—6661	4533	—7226	4593	—6209	4672	—5073	4734	—6337
4484	—6662	4534	—7236	4594	—6212	4673	—5075	4735	—6338
4485	—6663	4536	—7239	4595	—6213	4674	—5096	4736	—6339
4486	—6664	4537	—7238	4596	—6214	4675	—5096	4737	—6340
4487	—6667	4538	—7250	4597	—6215	4676	—5096	4738	—4371
4488	—6665	4539	—6141	4598	—6216	4677	—6260		6546
4489	—6671	4540	—6142	4599	—6217	4678	—6261		6547
4490	—6666	4541	—6142	4600	—6219	4679	—6262	4739	—6348
4490a	—6672	4541a	—6144	4601	—6220	4680	—6263		6349
4491	—6605	4541b	—6145	4602	—6221		6264	4740	—6350
4492	—6606	4541c	—6146	4603	—6222	4681	—6264	4741	—6351
4493	—6607	4542	—6151	4604	—6223	4682	—6266	4742	—6353
4494	—6608	4543	—6152	4605	—6224	4683	—6271	4743	—6354
4495	—6609	4544	—6153	4606	—6225	4684	—6272	4744	—6355
4496	—6610	4545	—6154	4607	—6226	4685	—6267	4745	—6395
4497	—6611	4546	—6206	4608	—6227	4686	—6268		6396
4498	—6613	4547	—6156	4609	—2286	4687	—6273		6397
4498a	—6617	4548	—6165	4610	—6228	4688	—6273	4746	—6410
4499	—6615	4549	—6158	4611	—6229	4689	—6269	4747	—6411
4500	—6620	4550	—6161	4612	—6230	4690	—6270	4748	—6412
4501	—6619	4551	—6162	4613	—6231	4691	—6274	4749	—6413
4502	—6622	4552	—6167	4614	—6232	4692	—6275	4750	—6414
4503	—6618	4553	—6166	4615	—6233	4693	—6276	4751	—6415
4503a	—6677	4554	—6168	4616	—6234	4694	—6277	4752	—6416
4504	—6623	4555	—6202		6235	4695	—6278	4754	—6417
4505	—6621	4556	—6203	4617	—6236	4696	—6284	4755	—6418
4505a	—6700	4557	—6170	4618	—6237	4697	—6286	4756	—6419
4505b	—6709	4558	—6169	4619	—6238	4698	—6280	4757	—6420
4505c	—6701	4559	—6164	4620	—6239	4699	—6282	4758	—6434
4505d	—6702	4560	—6172	4621	—6240	4700	—6283	4759	—6436
4505e	—6701	4561	—6173	4622	—6243	4701	—6295	4760	—6437
4505f	—6701	4562	—6174	4623	—6244	4702	—6296	4761	—6438
4505g	—6701	4563	—6175	4624	—6245	4703	—6297	4762	—6439
4505h	—6702	4564	—6176	4625	—6245	4704	—6294	4763	—6424
4505j	—6707	4565	—6177	4626	—6246	4705	—6297	4764	—6428
4505k	—6705	4566	—6178	4627	—6247	4706	—6298	4765	—6429
4505l	—6706	4567	—6179	4628	—6248	4707	—6301	4766	—6430
4506	—7159	4568	—6180	4629	—6252	4708	—6279	4767	—6431
4507	—7160	4569	—6181	4630	—6249	4709	—6313	4768	—6432
4509	—7077	4570	—6182	4631	—6250	4710	—6314	4769	—6425
4510	—7237	4571	—6183	4632	—6251	4711	—6315		6426
4511	—7241	4572	—6185	4633	—6253	4712	—6316	4770	—6422
4512	—7232	4573	—6186	4634	—6255	4713	—6361	4771	—6464
4513	—7242	4574	—6189	4635	—6256	4714	—6317	4772	—6464
4514	—7243	4575	—6190	4636	—5092	4715	—6318	4773	—6455
4515	—7244	4576	—6191	4637	—5068	4716	—6319	4773a	—6312
4516	—7245	4577	—6192	4638	—5069	4717	—6320	4773b	—6457
4517	—7240	4578	—6193	4635	—5070	4718	—6321	4774	—6456
4518	—7246	4579	—6194	4657	—5074	4719	—6322	4775	—6458
4519	—7247	4580	—6195	4658	—5070	4720	—6323	4776	—6466
4520	—7248		6198		5074	4721	—6324	4777	—6461

TABLE OF COMPARATIVE SECTIONS

Rev.	C. S.	Rev.	C. S.	Rev.	C. S.	Rev.	C. S.	Rev.	C. S.
4778	—6462	4837	—6541	4965	—6968	5025	—7405	5110	—7770
4779	—6460	4838	—6544	4966	—6969	5026	—7406	5111	—7772
4780	—6467	4839	—6542	4967	—6970	5027	—7407		7774
4781	—6468		6546	4968	—6971	5028	—7408		7776
4782	—6469	4840	—6545	4969	—6974	5029	—7411	5112	—7787
4783	—6470	4841	—6545	4970	—6975	5030	—7412	5113	—7783
4784	—6471	4843	—6548	4971	—6976	5031	—7417	5115	—7784
4785	—6472	4844	—6549	4972	—6977	5032	—7414	5116	—7782
4786	—6473	4845	—6550	4973	—6987	5033	—7413	5117	—7785
4787	—6474	4846	—6551	4974	—6988	5034	—7423	5118	—7788
4788	—6475	4856	—6864	4975	—6989	5035	—7415	5120	—7780
4789	—6476	4930	—6896	4976	—6990	5036	—7416	5121	—7789
4790	—6356	4931	—6897	4978	—6991	5037	—7418	5122	—7781
4791	—6357	4932	—6898	4979	—6992	5038	—7419	5123	—7790
4792	—6360	4933	—6899	4980	—6993	5039	—7421	5124	—7791
4793	—6362	4934	—6900	4981	—6994	5040	—7422	5125	—7791
4794	—6491	4935	—6901	4982	—6996	5041	—7424	5127	—7795
4795	—6492	4936	—6902	4983	—6997	5042	—7425	5128	—7793
4796	—6493	4937	—6903	4984	—5141	5043	—7426	5129	—7794
4797	—6494	4938	—6904	4985	—5143	5044	—7427	5132	—7796
4798	—6495	4939	—6905	4986	—5142	5045	—7420	5133	—7797
4799	—6376	4940	—6906	4987	—5144	5068	—6573	5134	—7798
4800	—6377	4941	—6907	4988	—5145	5069	—6574	5135	—7800
4801	—6378	4942	—6908	4989	—5146	5070	—6575	5136	—7803
4802	—6379	4943	—6910	4990	—5147	5071	—6576	5137	—7804
4803	— 340	4944	—6911	4991	—5148	5072	—6577	5138	—7805
	6380	4945	—6912	4992	—5149	5073	—6578	5139	—7807
4804	—6381	4946	—6913	4993	—5150	5074	—6579	5140	—7808
4805	—6363	4947	—6914	4994	—5151	5075	—6580		7809
4806	—6287	4948	—6915	4995	—5152	5076	—6581		7810
4807	—6288	4949	—6916	4996	—5153	5077	—6582	5141	—7811
4808	—6289	4950	—6917	4997	—5154	5078	—6583	5143	—7813
4809	—6290	4951	—6918	4998	—5155	5079	—6584	5144	—7814
4810	—6302	4952	—6919	4999	—5156	5080	—6585	5145	—7815
4811	—6292	4953	—6920	5000	—5151	5081	—6587	5146	—7816
4812	—6293	4954	—6921	5001	—5158	5082	—6586	5147	—7817
4813	—6303	4955	—6922	5002	—5159	5083	—6588	5148	—7818
4813a	—4199	4956	—6923	5002a	—5158	5084	—1428	5149	—7819
4814	—6304	4957	—6924		5160		6589	5150	—7820
4815	—2738	4957a	—6943	5003	—5162	5085	—6590	5151	—7820
	2740	4957b	—6944	5004	—5163	5086	—6591	5152	—7821
4816	—2739	4957c	—6945	5005	—5168	5087	—6592	5153	—7822
4817	—2740	4957d	—6946	5005a	—5167	5088	—6593	5154	—7823
4818	—6074	4957e	—6947	5006	—7025	5089	—6594	5155	—7824
4819	—6075	4957f	—6948	5007	—7028	5090	—6595	5156	—7826
4820	—6076	4957g	—6949	5008	—7027	5091	—6596	5157	—7827
4821	—6077	4957h	—6950	5009	—7040	5092	—7287	5158	—7828
4822	—6421	4957j	—6951	5010	—7031	5093	—7296	5159	—7829
4823	—6078	4957k	—6952	5011	—7034	5094	—7289	5160	—7830
4824	—6079	4957l	—6953	5012	—7036	5095	—7290	5161	—7831
4825	—6449	4957m	—6954	5013	—7039	5096	—7292	5162	—7832
4826	—6451	4957n	—6955	5014	—7041	5097	—7295	5163	—7833
4827	—6450	4957o	—6956	5015	—7044	5098	—7297	5165	—7835
	6451	4957p	—6957	5015a	—7047	5099	—7298	5175	—7844
4828	—6452	4957r	—6958	5016	—7043	5100	—7299	5176	—7846
4829	—6453	4957s	—6959	5017	—7029	5101	—7300		7847
4830	—6454	4958	—6960	5018	—7030	5102	—7301	5177	—7848
4831	—6311	4959	—6961	5019	—7404	5103	—7303	5178	—7849
4832	—6433	4960	—6962	5020	—7401	5105	—7307	5180	—7852
4833	—6439	4961	—6978	5021	—7403	5106	—7767	5183	—7854
4834	—4371	4962	—6979	5022	—7410	5107	—7768	5184	—7855
4835	—6538	4963	—6980	5023	—7402	5108	—7771	5185	—7856
4836	—6539	4964	—6967	5024	—7409	5109	—7769	5186	—7857

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5187	—7858	5244	—8040	5300	—7366	5354	—7664	5407	—7742
5188	—7859	5245	—8042	5301	—7367	5355	—7665	5408	—7745
5189	—7860	5246	—8043	5302	—7368	5356	—7666	5409	—7746
5190	—7861	5247	—8044	5303	—7369	5357	—7667	5410	—7758
5191	—7862	5248	—8045	5304	—7370	5358	—7668	5411	—7759
5192	—7863	5249	—8048	5305	—7372	5359	—7669	5412	—7760
5194	—7875	5250	—8049	5306	—7373	5360	—7670	5413	—7761
5195	—7876	5251	—8050	5307	—7374	5361	—7671	5414	—7764
5196	—7869	5252	—8046	5308	—7375	5362	—7672	5415	—7765
5197	—7877	5253	—8051	5309	—5127	5363	—7673	5416	—7766
5198	—7879	5254	—7988	5310	—5128	5364	—7674	5416a	—7513
5200	—7865	5254a	—7872	5311	—5129	5365	—7675	5416b	—7314
5201	—7902	5255	—7933	5312	—5130	5366	—7676	5416c	—7316
	8004	5256	—7934	5313	—5131	5367	—7677	5416d	—7318
5202	—7894	5257	—7935	5315	—7396	5368	—7678	5416e	—7320
5203	—7904	5258	—7871	5316	—7397	5369	—7679	5416f	—7322
5204	—7905	5259	—7900	5317	—7398	5370	—7682	5416g	—7323
5205	—7906	5260	—7920	5318	—7399	5371	—7684	5416h	—7327
5206	—7897	5261	—8047	5319	—7400	5372	—7530	5416j	—7324
5207	—7883	5262	—8052	5320	—7536		7683	5416k	—7326
5208	—7895	5263	—7975	5321	—7535	5373	—7628	5416l	—7325
5209	—7898	5264	—7993	5321b	—7537		7686	5416m	—7317
	7937	5265	—7998	5321c	—7538	5374	—7687	5416n	—7319
5210	—7899	5266	—7978	5321d	—7539	5375	—7688	5416o	—7321
5211	—7907	5267	—7948	5322a	—7517	5376	—7689	5416p	—7328
5212	—7897	5268	—7921		7520	5377	—7690	5426	—8053
5213	—7928	5269	—7922	5322b	—7521	5378	—7692	5426a	—8059
5214	—7927	5270	—7941	5322c	—7518	5379	—7693	5426b	—8059
5215	—7903	5271	—7943	5223	—7624	5380	—7694	5427	—8054
5217	—7909	5272	—7944	5324	—7625	5381	—7696	5428	—8055
5218	—7910	5273	—7945	5325	—7626	5382	—7697	5429	—8056
5219	—7913	5274	—7946	5326	—7627	5383	—7698	5430	—8057
5220	—7915	5275	—7947	5327	—7635	5384	—7699	5431	—6754
5221	—7916	5276	—7949	5328	—7636	5385	—7700	5432	—6755
5222	—7917	5277	—7950	5329	—7637	5386	—7701	5433	—6756
5223	—7901	5278	—7951	5330	—7638	5387	—7702	5434	—6757
5224	—7929	5279	—7952	5331	—7639	5388	—7703	5435	—6758
5225	—7911	5280	—7953	5332	—7640	5389	—7704	5436	—6759
5226	—7912	5281	—7954	5333	—7641	5390	—7706	5437	—6760
5227	—7914	5282	—7955	5334	—7642	5390a	—7209	5438	—6761
5228	—7918	5283	—7956	5335	—7643		7212	5438a	—6677
5229	—7908	5284	—7957	5336	—7644	5391	—7707	5439	—8082
5230	—7919	5285	—7958	5337	—7645	5392	—7705	5440	—8083
5231	—7926	5286	—7959	5338	—7647	5393	—7708	5441	—8085
5232	—7924	5287	—7960	5339	—7646	5394	—7709	5442	—8086
5233	—7923	5288	—7961	5340	—7648	5395	—7710	5443	—8087
5234	—7936	5288a	—7968	5341	—7649	5396	—7711	5444	—8088
5235	—7938	5289	—7969	5342	—7650	5397	—7717	5445	—8089
5236	—7939	5290	—7962	5343	—7651	5398	—7718	5446	—8090
5237	—7940	5291	—7964	5344	—7652	5399	—7719	5447	—8091
5238	—7930	5292	—7965	5345	—7654	5400	—7720	5448	—8092
	7991	5293	—7966	5346	—7655	5401	—7721	5449	—8093
5239	—7931	5294	—7967	5347	—7656	5402	—7722	5450	—8090
5240	—7932	5295	—7970	5348	—7658		7725	5451	—8095
5241	—7994	5296	—7989	5350	—7660	5403	—7725	5452	—8096
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